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Monday
August 16, 1982

Selected Subjects

Air Pollution Control
Environmental Protection Agency

Airmen
Federal Aviation Administration

Anchorage Grounds
Coast Guard

Aviation Safety
Federal Aviation Administration

Coal Mining
Surface Mining Reclamation and Enforcement Office

Credit
Federal Reserve

Crop Insurance
Federal Crop Insurance Corporation

Customs Duties and Inspection
Customs Service

Dental Health
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National Oceanic and Atmospheric Administration

Freedom of Information
Army Department

Government Procurement
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Grant Programs—Housing and Community Development
Community Planning and Development, Office of Assistant Secretary

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Selected Subjects

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

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 418

[Amdt. No. 1]

Wheat Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby amends the Wheat Crop Insurance Regulations (7 CFR Part 418), effective with the 1983 and succeeding crop years by (1) adding a Section 11 to the Appendix to the Policy to prescribe procedures in cases of loss by fire, (2) prescribing interest rates to be charged when premium payments are not made within a certain time, and (3) adding a provision to require (a) that the insured file a notice of probable loss when the crop is damaged to the extent that a loss is probable, and (b) require that the insured leave intact a representative sample of unharvested crop. The intended effect of this amendment is to restore a provision in the regulations regarding losses from fire, improve the debt management practices of FCIC, and revise the system of reporting damage or loss to crops to make the administration of the program more effective. This final rule confirms the interim rule published in the Federal Register on April 21, 1982.

EFFECTIVE DATE: August 16, 1982.

ADDRESS: Comments on this rule may be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325.

The Impact Statement describing the options considered in developing this rule and the impact of implementing each option is available upon request from Peter F. Cole.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in the regulations to which this amendment applies (7 CFR Part 418) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 (June 11, 1981).

On Wednesday, April 21, 1982, the Federal Crop Insurance Corporation published an interim rule in the **Federal Register** at 47 FR 17033, which amended the Wheat Crop Insurance Regulations (7 CFR Part 418) in three instances to:

1. Restore Section 11 to the Appendix to the Policy to provide that if the insured has other insurance against fire losses, FCIC shall be liable for loss due to fire only for the smaller of the amount of the indemnity under the FCIC contract or the amount by which the loss from fire exceeds the indemnity paid under such other insurance.

2. Amend Section (d) of 7 CFR 418.7(d), Terms and Conditions to provide that, for the 1983 and succeeding crop years, unpaid premiums will bear interest at the rate of 1½% simple interest per month, or any part thereof, starting on the first day of the month following the month in which the acreage reporting date for the crop in the county occurred.

3. Add to paragraph 7 of 7 CFR 418.7(d), Terms and Conditions to provide that if a crop is damaged to the extent that a loss is probable, the insured is required to give written notice of damage at least 15 days prior to the beginning of harvest. If a probable loss is not determined until less than 15 days prior to harvest, insured is required to give such notice immediately and leave a representative sample of unharvested crop for 15 days after the date of the notice.

The public was given 60 days following the publication of the interim rule in which to submit written comments, data, and opinions on the rule.

Two responses in opposition to the rule were received during the 60-day period. One from the National Association of Wheat Growers, and the other from the National Association of Crop Insurance Agents.

The comments concerned the following:

1. The establishment of interest rates on any unpaid premium balance.

2. The proposed billing date established in relationship to the acreage reporting date.

3. The adoption of an interim rule without the opportunity for prior public comment.

The response of the Federal Crop Insurance Corporation are as follows, by number.

1. The Federal Crop Insurance Act, as amended, is silent on the issue of charging interest rates on unpaid premium balances. The general governmentwide policy, however, requires that interest be charged on past-due accounts (Office of Inspector General Audit No. 5099–17; Treasury Fiscal Requirements Manual, Section 8020; 7 AR 1206.5; Department of Agriculture's Phase I Study).

Although premiums are due at the time insurance attaches, FCIC has not considered them delinquent until the termination date of the policy. This has adversely affected the cash flow plans of the agency since most premiums were not paid until after indemnities were paid by the Corporation. This free credit to the insured is contrary to the general indemnity practices and required that the Corporation expend large amounts of interest on funds borrowed from the Treasury.

It is the intention of the present administration to improve debt management practices within the Federal Government; therefore, FCIC is committed to charge an interest rate on any unpaid premium balances. We note that interest is now charged after the termination date. This provision only advances the application date of the interest charges and the applicable rate of interest.

2. The billing dates, as contained in the interim rule, were reviewed by FCIC and found to be inequitable as published. The interim rule states that interest will accrue at the rate of one

and a half percent (1½%) simple interest per calendar month, or any part thereof, *starting on the first day of the month following the month in which the acreage reporting date for the crop in the county occurs.* (emphasis added)

As this formula would apply to spring-seeded wheat, for example, the acreage reporting date is June 25, with the first premium billing date on September 1. Under this proposal, the insured would have until October 1 to pay premium without interest. If the premium was not paid by that date, interest would be computed to July 1 (the first day of the month following the month in which the acreage reporting date occurred), resulting in an immediate four-month interest charge.

While the premium is due and payable when insurance attaches at the time of seeding or planting, the common practice is to meet growing season obligations from the proceeds of the crop at harvesttime. With this in mind, FCIC has historically deferred collection of premium until after harvest.

FCIC has decided to amend the provision to provide that interest will attach on the first day of the month following the first premium billing date. This will result in little, if any, departure from the general practice of collecting premium at harvest, thus providing the insured with protection while deferring premium payment until harvesttime. We believe this amendment satisfactorily addresses the concerns expressed by both the National Association of Wheat Growers and the National Association of Crop Insurance Agents. In addition, all insureds have been notified of this change in the billing procedure and alerted as to the first premium billing date established for their crop(s).

3. The determination to adopt the interim rule without prior public comment was made under the provisions for such emergencies contained in Secretary's Memorandum No. 1512–1 (June 11, 1981), and described in the rule.

Under the provisions of the regulations for insuring wheat, any amendments or revisions to the regulations must be placed on file 15 days before the cancellation date. The earliest cancellation date for wheat is April 30; therefore, an amendment must be placed on file by April 15 in order to be effective for the 1983 crop year.

Final approval of the provision governing the interest rate charge was not made until just prior to publication of the interim rule; therefore there would not have been sufficient time to permit public comment prior to making the rule effective. FCIC provided 60 days for such comment after publication so that the rule could be scheduled for review and necessary amendments to the rule could be published.

Merritt W. Sprague, Manager, FCIC, has determined that (1) this action is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), (2) this action does not increase the Federal paperwork burden for individuals, small businesses, or other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which this amendment applies are: Title—Crop Insurance; Number 10.450.

This action will not have a significant impact specifically upon area and community development; therefore, review as established in OMB Circular A–95 was not used to assure that units of local government are informed of this action.

It has been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

It has also been determined that this action does not constitute a review as to the need, clarity, currency, or effectiveness of these regulations under the provisions of Secretary's Memorandum No. 1512–1 (June 11, 1981). That review will be completed prior to the sunset review date of February 8, 1987.

Accordingly, Amendment No. 1 to the Wheat Crop Insurance Regulations (7 CFR Part 418), published as an interim rule in the **Federal Register** on Wednesday, April 21, 1982, at 47 FR 17033–17034, is herewith published in its entirety as a final rule to be effective with the 1983 and succeeding crop years.

List of Subjects in 7 CFR Part 418

Crop insurance, Wheat.

Final Rule

PART 418—WHEAT CROP INSURANCE

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Wheat Crop Insurance Regulations (7 CFR Part 418), effective with the 1983 and succeeding crop years, in the following instances:

1. The authority for 7 CFR Part 418 is revised to read as follows:

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 72, as amended (7 U.S.C. 1506, 1516).

2. Paragraph 5(d) of the Terms and Conditions section of the Policy as found in 7 CFR § 418.7(d) is amended to read as follows:

§ 418.7 The application and policy.

* * * * *

(d) * * *

Wheat Crop Insurance Policy

Terms and Conditions

* * * * *

5. *Annual Premium.*

* * * * *

(d) Interest will accrue at the rate of one and a half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

3. Paragraph 7 of the Terms and Conditions section of the Policy as found in 7 CFR 418.7(d) is amended by redesignating paragraphs (d) and (e) as paragraphs (e) and (f) and by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 418.7 The application and policy.

* * * * *

(d) * * *

Terms and Conditions

* * * * *

(c) Notice shall be given at least 15 days prior to the beginning of harvest if the wheat on any unit is damaged to the extent that a loss is probable. If probable loss is not determined until less than 15 days prior to the beginning of harvest on a unit, notice shall be given immediately and a representative sample of the unharvested wheat (at least 10 feet wide and the entire length of the field) shall remain intact for a period of 15 days from the date of the notice, unless the Corporation gives written consent to the insured to harvest the representative sample.

(d) In addition to the notices required in paragraphs (b) and (c) of this section, if a loss is to be claimed on any unit, the insured shall give written notice thereof to the Corporation at the office for the county not later than *30 days* after the earliest of (1) the date-harvest is completed on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire wheat crop on the unit is destroyed, as determined by the Corporation. The Corporation reserves the right to provide additional time if there are extenuating circumstances.

4. The Appendix to the Wheat Insurance Policy (Additional Terms and Conditions) as found in 7 CFR 418.7 is hereby amended by adding section 11 to read as follows:

§ 418.7 The application and policy.

* * * * *

(d) * * *

Wheat Crop Insurance Policy

* * * * *

Appendix to the Wheat Insurance Policy—(Additional Terms and Conditions)

* * * * *

11. Other Insurance Against Fire. If the insured has other insurance against damage by fire during the insurance period, the Corporation shall be liable for loss due to fire only for the smaller of (a) the amount of indemnity determined by the Corporation under the policy with the Corporation or (b) the amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire shall be the difference between the fair market value of the production on the unit before the fire and after the fire, as determined by the Corporation from appraisals made by the Corporation.

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

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: July 29, 1982.

Approved by:

Merritt W. Sprague,

Manager.

[FR Doc. 82-22257 Filed 8-13-82; 8:45 am]

BILLING CODE 3410-08-M

FEDERAL RESERVE SYSTEM

12 CFR Part 201

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

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A, "Extensions of Credit by Federal Reserve Banks," for the purpose of adjusting discount rates with a view to accommodating commerce and business in accordance with other related rates and the general credit situation of the country. The action was taken in the context of recent declines in short-term market rates and the relatively restrained growth of money and credit in recent months.

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

FOR FURTHER INFORMATION CONTACT: William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452-3257).

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

List of Subjects in 12 CFR Part 201

Banks, Banking, Credit unions, Foreign banks.

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS

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

1. Section 201.51 is revised to read as follows:

§ 201.51 Short term adjustment credit for depository institutions.

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

Federal Reserve Bank of—	Rate	Effective
Boston	11½	July 21, 1982.
New York	11½	July 20, 1982.
Philadelphia	11½	July 23, 1982.
Cleveland	11½	July 21, 1982.
Richmond	11½	July 20, 1982.
Atlanta	11½	July 20, 1982.
Chicago	11½	July 20, 1982.
St. Louis	11½	July 21, 1982.
Minneapolis	11½	July 21, 1982.
Kansas City	11½	July 20, 1982.
Dallas	11½	July 20, 1982.
San Francisco	11½	July 20, 1982.

2. Section 201.52 is revised to read as follows:

§ 201.52 Exended credit to depository institutions.

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

Federal Reserve Bank of—	Rate	Effective
Boston	11½	July 21, 1982.
New York	11½	July 20, 1982.
Philadelphia	11½	July 23, 1982.
Cleveland	11½	July 21, 1982.
Richmond	11½	July 20, 1982.
Atlanta	11½	July 20, 1982.
Chicago	11½	July 20, 1982.
St. Louis	11½	July 21, 1982.
Minneapolis	11½	July 21, 1982.
Kansas City	11½	July 20, 1982.
Dallas	11½	July 20, 1982.
San Francisco	11½	July 20, 1982.

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

Federal Reserve Bank of—	Rate	Effective
Boston	11½	July 21, 1982.
New York	11½	July 20, 1982.
Philadelphia	11½	July 23, 1982.
Cleveland	11½	July 21, 1982.
Richmond	11½	July 20, 1982.
Atlanta	11½	July 20, 1982.
Chicago	11½	July 20, 1982.
St. Louis	11½	July 21, 1982.
Minneapolis	11½	July 21, 1982.
Kansas City	11½	July 20, 1982.
Dallas	11½	July 20, 1982.
San Francisco	11½	July 20, 1982.

Note.—These rates apply for the first 60 days of borrowing. A 1 percent surcharge applies for borrowing during the next 90 days, and a 2 percent surcharge applies for borrowing thereafter.

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

By order of the Board of Governors of the Federal Reserve System, August 10, 1982.

William W. Wiles,

Secretary of the Board.

[FR Doc. 82-22205 Filed 8-13-82; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 39

Chapter I—Federal Aviation Administration

[Airworthiness Docket No. 82-ASW-38; Amdt. 39-4439]

Airworthiness Directives; Bell Helicopter Textron Models 206A, 206A-1, 206B, 206B-1, 206L, 206L-1, and 206L-3

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires a one time inspection of certain tail rotor blades and repair or replacement as necessary on Bell Model 206A/B/L series helicopters. The inspection will prevent loss of a blade tip block and balance weight which could result in loss of the tail rotor and loss of helicopter control.

DATES: Effective: August 26, 1982.

Compliance required within the next 10 hours operating time after the effective date of this AD.

ADDRESSES: The applicable service information may be obtained from Product Support Department, Bell Helicopter Textron, P.O. Box 482, Fort Worth, Texas 76101.

These documents may be examined at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas, or Rules Docket in Room 916, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: H. A. Armstrong, Helicopter Branch, Aircraft Certification Division, ASW-170, Federal Aviation Administration, Southwest Region, P.O. Box 1689, Fort Worth, Texas 76101, telephone number (817) 624-4911, extension 521.

SUPPLEMENTARY INFORMATION: A recent accident involving a Model 206L-1 helicopter has been tentatively attributed to the loss of a portion of the tail rotor blade tip block along with a balance weight. The resulting high frequency vibratory loads caused failure of the tail rotor gearbox attachment. The resulting loss of directional control led to a forced landing at sea. There were no injuries. The blade in question had 418 hours at the time of the accident. This is the only reported loss of a tip block, or a portion thereof, on a "stainless steel blade."

During inspection, subsequent to the above accident, several tail rotor blades were found with corrosion of the tip block rivets and some had rivet heads missing. Two of these blades had voids between the skin shell and the tip block. Total operating time of these blades ranged from 418 hours to 2,357 hours. These conditions are likely to occur on other Model 206 series helicopters.

This AD requires a one time inspection of certain tail rotor blades on Bell Model 206A/B/L series helicopters, and repair or replacement as necessary. The inspection will prevent loss of the blade tip block and balance weight and resulting loss of the tail rotor and of helicopter control.

The blade inspection required by this AD must be done by a properly rated mechanic and will require approximately 0.2 man-hours. Approximately 3 man-hours are additionally required to replace unserviceable blades. Approximately 4,000 aircraft are subject to these checks. The approximate cost is $6 per helicopter for the inspection. The labor cost, if replacement is required, is approximately $90 per replacement.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Amendment

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

Bell: Applies to Bell Models 206A, 206A-1, 206B, 206B-1, 206L, 206L-1, and 206L-3 helicopters certified in all categories.

Compliance is required within the next 10 hours operating time after the effective date of this AD.

To prevent possible loss of the tail rotor blade tip block and resulting tail rotor imbalance which could lead to tail rotor gearbox attachment stud failure, accomplish the following in accordance with Bell Helicopter Textron Alert Service Bulletin No. 206-82-16 (206A, 206A-1, 206B, 206B-1), or No. 206L-82-26 (206L, 206L-1, 206L-3), or FAA approved equivalent:

(a) Inspect tail rotor blades, Part Number's 206-016-201-001 and 206-016-201-103, for serviceability with special emphasis on the tip block area. (See Figure 1.)

(1) Visually check for corroded rivets and/or missing rivet heads.

(i) Corroded or missing rivets shall be replaced with rivet P/N MS20426AD3 or FAA approved equivalent. Install replacement rivets with wet epoxy polyamide primer, MIL-P-23377, before further flight. Check for proper countersink prior to rivet installation.

(ii) If an oversize rivet is required, only rivet P/N MS20426B4 may be used due to the difficulty of installation.

Caution

Skin shell thickness is 0.008-inch. Care must be taken during countersink operation if oversize rivet is required.

(2) Visually check for rivet heads that have pulled through the skin shell in the tip block area.

Note.—A rivet head that has pulled through the skin shell will require replacement of the blade before further flight.

(3) Visually check for voids or separations between the skin shell and the tip block. Limits for voids or gaps between the shell and the tip block are as follows:

(i) A void (or gap), no greater than 0.25-inch wide (chordwise) at the leading edge is acceptable but must be sealed (see Figure 1). Seal with EC-2216 or EA934 or FAA approved equivalent in accordance with the appropriate Model 206 maintenance manual.

(ii) A void (or gap), no greater than 0.12-inch wide (chordwise) between the shell and the aft end of the tip block is acceptable but must be sealed (see Figure 1). Seal with EC-2216 or EA934 or FAA approved equivalent in accordance with the appropriate Model 206 maintenance manual.

(iii) With the exception of paragraphs (i) and (ii) above, voids between the shell and the tip block that are visible at the tip are unacceptable.

(iv) Any voids in excess of these limitations shall require replacement of the blade before further flight.

(v) Any movement or displacement of the tip block outboard of the tip of the skin shell shall require replacement of the blade before further flight.

(b) The required inspection and any repair or replacement work required must be done by a properly rated mechanic.

Note.—For the requirements regarding the listing of compliance with this AD in the aircraft's permanent maintenance record, see § 91.173 of the Federal Aviation Regulations.

(c) Any equivalent method of compliance with this AD must be approved by the Chief, Aircraft Certification Division, Southwest Region, Federal Aviation Administration.

This amendment becomes effective August 16, 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)); 14 CFR 11.89)

Note.—The FAA has determined that this document involves a regulation that is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption **"FOR FURTHER INFORMATION CONTACT."**

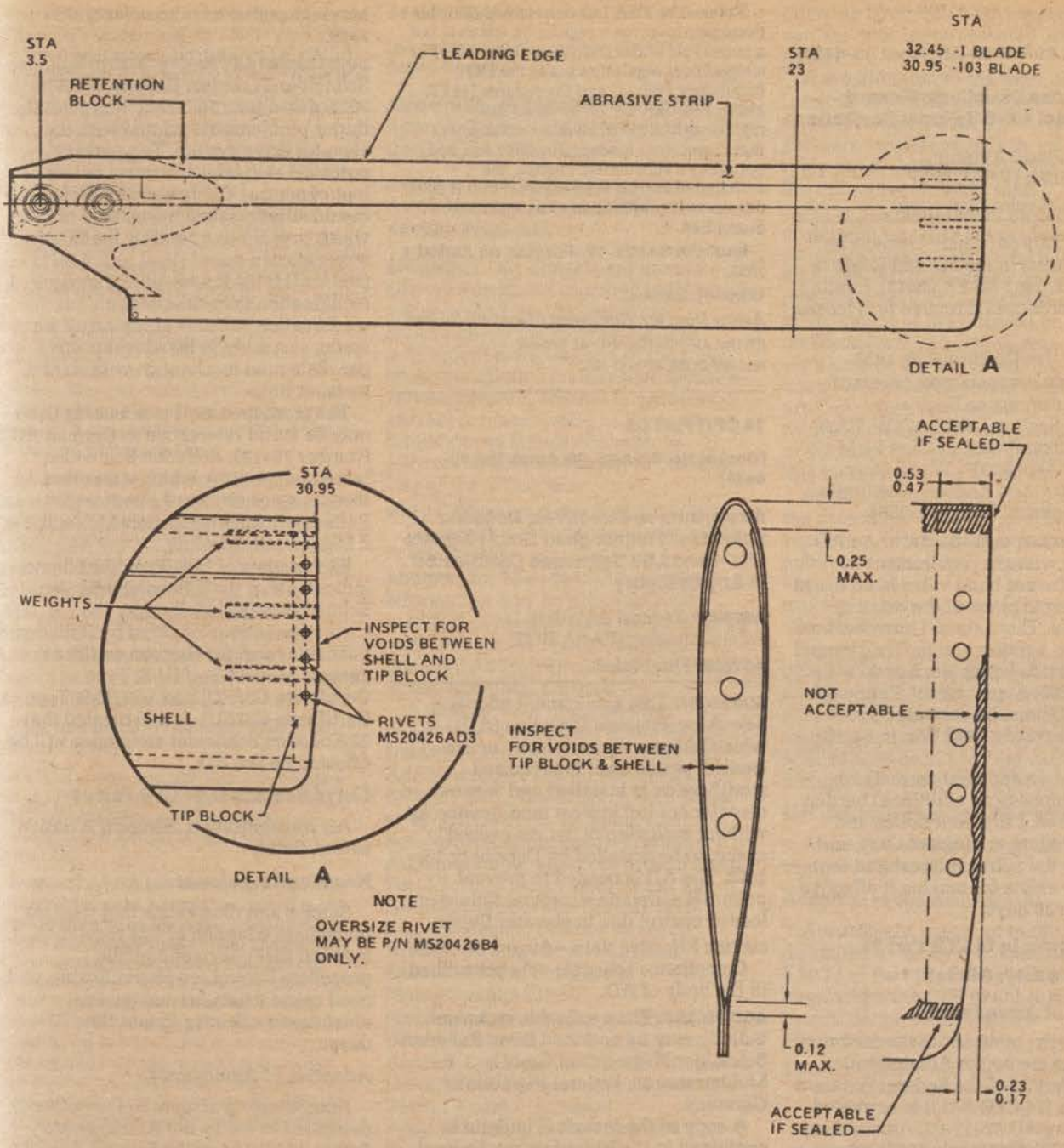
This rule is a final order of the Administrator. Under Section 1006(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1486(a)), it is subject to review only by the various courts of appeals of the United States, or the United States Court of Appeals for the District of Columbia.

Issued in Fort Worth, Texas, on August 4, 1982.

C. R. Melugin, Jr.,

Director, Southwest Region.

BILLING CODE 4910-13-M



TAIL ROTOR BLADE INSPECTION
FIGURE 1

[FR Doc. 82-21957 Filed 8-13-82; 8:45 am]
BILLING CODE 4910-13-C

14 CFR Part 39

[Docket No. 81-WE-22-AD; Amdt. 39-4406]

Airworthiness Directives; Piccard Ballon Model AX-6 Balloon; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error appearing in the **Federal Register** dated July 1, 1982 (47 FR 28612), relating to an airworthiness directive for Piccard Balloon.

DATE: Effective Date: July 30, 1982.

FOR FURTHER INFORMATION CONTACT: Don Watt, Aerospace Engineer, Propulsion Section, ANM-174W, FAA Western Aircraft Certification Field Office, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6384.

SUPPLEMENTARY INFORMATION: An AD was issued with the requirement to install a different blast valve handle and return spring in place of the existing blast handle. There should have been no reference to a return spring. The General Balloon Service Letter No. 8 and Drawing 8200-A are correct. Paragraph B. of the AD must be corrected by deleting the words "and Return Spring PSP 607."

Since this amendment corrects an error and imposes no additional burden on any person, I find that notice and public procedure are unnecessary and contrary to the public interest and that good cause exists for making it effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Correction of 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 corrected, by correcting AD 82-13-02, Amendment 39-4406 (47 FR 28612; July 1982) as follows:

Delete the words "and Return Spring PSP 607" to make paragraph B read as follows:

B. Install blast valve handle P/N PSP 608 in place of blast valve handle P/N S041-7 per General Ballon Corporation Service Letter No. 8, dated December 4, 1981, and Drawing 8200-A, dated September 18, 1981.

(Sec. 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.—The FAA has determined that this document involves a regulation which is not a major rule under Executive Order 12291 or a significant regulation under the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an amendment that corrects an inadvertent error and does not make a substantive change, the anticipated impact is so minimal that it does not warrant preparation of a regulatory evaluation.

Issued in Seattle, Washington, on August 4, 1982.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 82-21948 Filed 8-13-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 82-ANE-26; Amdt. No. 39-4438]

Airworthiness Directives; Rolladen Schneider Flugzeugbau GmbH Models LS1-f and LS3 Sailplanes Certificated in Any Category

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which reduces the sailplane "never exceed" speed until the required modification is installed and requires an elevator control system modification kit, without reduction of "never exceed" speed, to be installed by December 15, 1982. The AD is needed to prevent potential sailplane structural failure or loss of control due to elevator flutter.

DATES: Effective date—August 16, 1982.

Compliance schedule—As prescribed in the body of AD.

ADDRESSES: The applicable technical bulletin may be obtained from: Rolladen Schneider Flugzeugbau GmbH, Muhlstrasse 10, Federal Republic of Germany.

A copy of the technical bulletin is contained in the Rules Docket, Federal Aviation Administration, Office of Regional Counsel, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: C. Christie, Chief, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, Federal Aviation Administration, C/O American Embassy, Brussels, Belgium; telephone 513.38.30; or Edward W. Maila, ANE-152, Boston Aircraft Certification Branch, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts; telephone (617) 273-7329.

SUPPLEMENTARY INFORMATION: Rolladen Schneider Technical Bulletin No. 38/3013, dated June 18, 1979, cites possible flutter problems associated with the elevator drive system. To preclude potential sailplane structural failure or loss of control due to elevator flutter, the manufacturer issued a technical bulletin which prescribes operating limitations never exceed speed (V_{NE}) to 124 MPH (200 km/H, 108 knots), until the required modification is installed. The modification consists of replacing the spring assembly in the elevator drive parallelogram mechanism with a solid member link.

The manufacturer's technical bulletin may be found referenced in German AD Number 79-109, Rolladen Schneider, issued July 4, 1979, which states that there is a possibility of elevator flutter in Rolladen Schneider Models LS1-e, LS1-f, LS1-ef, LS2, and LS3.

FAA review of U.S. Type Certificates indicates that the following Rolladen Schneider Models fall under the corrective actions required by Rolladen Schneider and the German certification agency: Model LS1-f (U.S. Type Certificate G35EU) and LS3 (U.S. Type Certificate G37EU). It is estimated that 23 Rolladen Schneider sailplanes will be affected by the AD

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Need for Amendment

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

Adoption of 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 effective August 16, 1982, by adding the following new AD:

Rolladen Schneider: Applies to Model Nos. LS1-f and LS3 sailplanes, certificated in any category, which do not have Rolladen Schneider Technical Bulletin No. 38/3013, dated June 18, 1979, incorporated.

Compliance is required as indicated, unless already accomplished.

To prevent potential sailplane structural failure or loss of control due to elevator flutter, accomplish the following:

a. Within the next 15 hours time in service after the effective date of this AD, unless

already accomplished or unless the modification required by paragraph b of this AD has been accomplished, apply red tape to the air speed indicator and alter the airspeed limit placard restricting "never exceed airspeed" (V_{NE}) to 124 MPH (200 km/H, 108 knots) in accordance with Rolladen Schneider Technical Bulletin No. 38/3013, dated June 18, 1979, paragraphs 1 (a) and (b), or an FAA approved equivalent.

b. Modify the elevator control system in accordance with Rolladen Schneider Technical Bulletin No. 38/3013, dated June 18, 1979 paragraphs 2 and 3, or an FAA approved equivalent, by December 15, 1982. The placard and airspeed indicator alterations required by paragraph a of this AD may be removed when this modification is accomplished.

Note.—Elevator control system modification consists of replacing the spring assembly in the elevator drive parallelogram mechanism with a solid link.

An equivalent means of compliance may be approved by the Chief, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Office, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium, or the Chief, Boston Aircraft Certification Branch, ANE-150, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective August 16, 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)); 14 CFR 11.89)

Note.—The FAA has determined that this document involves a 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). A final regulatory evaluation has been prepared for this regulation and has been placed in the public docket and a copy may be obtained in writing to Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket No. 82-ANE-26, 12 New England Executive Park, Burlington, Massachusetts.

This rule is a final order of the Administrator. Under Section 1006(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1486(a)), it is subject to review by the Courts of Appeal of the United States, or the United States Court of Appeals for the District of Columbia.

Issued in Burlington, Massachusetts, on August 3, 1982.

Robert E. Whittington,

Director, New England Region.

[FR Doc. 82-21958 Filed 8-13-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Airworthiness Docket No. 82-ASW-51; Amdt. 39-4437]

Airworthiness Directives; Sikorsky Aircraft Model S-76A Helicopters Certified In All Categories

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires puck-to-disk clearance inspections of the rotor brake, and subsequent modifications of the rotor brake installation on Sikorsky Model S-76A helicopters. The AD is needed to prevent malfunctioning of the rotor brake, due to failure of a puck to release, which could result in fire and loss of the helicopter.

DATES: Effective date: August 23, 1982.

Compliance schedule—as prescribed in text of AD.

ADDRESSES: The applicable service information may be obtained from Manager of Maintenance Services, S-76 and Commercial Product Support, Sikorsky Aircraft Division, North Main Street, Stratford, CT 06602.

A copy of each of the service documents is contained at the Rules Docket, Room 916, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; at the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76106; and at the Aircraft Certification Branch, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Bernard Schaffer, ANE-153, Boston Aircraft Certification Branch, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone: (617) 273-7332.

SUPPLEMENTARY INFORMATION: There have been several incidents of malfunctioning S-76A rotor brakes caused by hydraulic fluid leakage or by failure of a puck to release. Some of these incidents resulted in contained fires on the ground. Leakage of hydraulic fluid on a heated disk during brake application could cause a fire. Failure of a puck to release could cause overheating of the disk and brake assembly. This overheating could result in deterioration of hydraulic seals, allowing hydraulic fluid to come into contact with the overheated disks and pucks.

A modification to the rotor brake warning system is necessary to improve the self-cleaning capabilities of the pressure switch contacts in the No. 2 relay panel assembly and thus increase the reliability of this system.

Since this condition is likely to exist or develop on other helicopters of the same type design, an airworthiness directive (AD) is being issued which requires a preflight inspection or modification of the rotor brake system on Sikorsky S-76A helicopters. Until such time as the modifications are made, it is necessary to establish a preflight inspection for rotor brake puck-to-disk clearance, after each application of the rotor brake. After modification, this inspection is no longer required.

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

Approximately 225 aircraft could be affected by the requirements of this AD for an estimated one-time fleet impact of $270,000 or $1200 per aircraft for the modification and an annual fleet impact of $2,875,000 or $12,755 annually per unmodified aircraft for inspections.

List of Subjects in 14 CFR Part 39

Aircraft, Aviation safety, Air transportation, Safety.

Adoption of the Amendment

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

Sikorsky Aircraft: Applies to Sikorsky Model S-76A helicopters, equipped with rotor brake systems, certificated in all categories.

Compliance is required as indicated, unless already accomplished. To prevent the possibility of fire due to a malfunctioning rotor brake, accomplish the following:

(a) Within the next 10 hours' time in service after the effective date of the AD, on aircraft equipped with P/N 76363-09101-101 rotor brake:

(1) Prior to each flight whenever the rotor brake has previously been applied, inspect puck-to-disk clearance for .045 inch minimum at all 4 pucks.

(2) If the puck-to-disk clearance is less than .045 inch, remove rotor brake assembly and replace with a serviceable unit.

(b) Within the next 90 days after the effective date of the AD, unless already accomplished:

(1) Modify the No. 2 relay panel assembly in accordance with the Accomplishment Instructions, Paragraph 2, of Sikorsky Customer Service Bulletin No. 76–66–7, dated March 9, 1981, or FAA approved equivalent.

(2) Modify the brake installation by the addition of shield assemblies in accordance with the Accomplishment Instructions, Paragraph 2, of Sikorsky Customer Service Bulletin No. 76–66–8A, dated September 30, 1981, or FAA approved equivalent.

Note.—After installation of the shield assemblies, the supplementary installation of an access door in the upper rotor brake shield, in accordance with Sikorsky Customer Service Notice No. 76–79, dated December 23, 1981, or later FAA approved revision, may be accomplished at the operator's option.

(3) Install a warning relay in accordance with the Accomplishment Instructions, Paragraph 2, of Sikorsky Customer Service Bulletin No. 76–66–10B, dated November 25, 1981, or FAA approved equivalent.

(4) Modify Sikorsky P/N 76363–09101–101 brake by the installation of torqueless grip adjusters, Goodyear P/N 9522164, in accordance with Sikorsky Customer Service Notice No. 76–51B, dated April 22, 1982, or FAA approved eqivalent, and Customer Service Letter CSL–SPT–82–089, dated May 20, 1982, or FAA approved equivalent. Reassemble and test in accordance with Paragraph B and C of Sikorsky Customer Service Notice No. 76–51B, dated April 22, 1982, or FAA approved equivalent.

(c) After compliance with paragraph (b) of the AD, the inspection prescribed by paragraph (a)(1) above is no longer required.

(d) Equivalent means of compliance may be approved by the Chief, Boston Aircraft Certification Branch, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803.

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)); 14 CFR 11.89)

Note.—The FAA has determined that this document involves a regulation that is not considered to be major under Executive Order 12291, or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"For Further Information Contact."**

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

Issued in Fort Worth, Texas, on July 30, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 82–21947 Filed 8–13–82; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 82–ASW–53]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Control Zone: Fayetteville, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the description of the control zone at Fayetteville, AR. This amendment will return to public use airspace no longer required for the protection of aircraft arriving/departing the Drake Airport. The amendment is necessary due to the part-timing of the Fayetteville Flight Service Station (FSS). If a facility is reduced to less than a 24-hour status, there will be no weather reporting available when the facility is nonoperational. Therefore, the airport will not meet the requirements for a control zone during this period.

DATES: Effective date—October 28, 1982.

Comments on the rule must be received before October 1, 1982.

ADDRESSES: Send comments on the action in triplicate to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region: Docket No. 82–ASW–53, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW–535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 624–4911, extension 302.

SUPPLEMENTARY INFORMATION: .

History

Federal Aviation Regulation Part 71, Subpart F 71.171 as republished in Advisory Circular AC 70–3 dated January 29, 1982, contains the description of control zones designated to provide controlled airspace for the benefit of aircraft conducting instrument flight rules (IFR) activity. Alteration of the control zone description at Fayetteville, AR, will necessitate an amendment to this subpart. A statement at the end of the current description must be inserted in order to have the capability of part-timing the control zone by use of a Notice to Airmen (NOTAM) when the FSS is not operational.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends the dimensions of the Fayetteville, AR, control zone. Because this action reduces a burden on the public by releasing controlled airspace, I find that notice and public procedure and publication 30 days before the effective date are unnecessary; however, comments are invited on the rule. When the comment period ends, the FAA will use the comments and any other available information to review the regulation.

List of Subjects in 14 CFR Part 71

Control zones and/or transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished in Advisory Circular AC 70–3 dated January 29, 1982, is amended, effective 0901 GMT, October 28, 1982, by adding:

Fayetteville, AR Amended

The control zone shall be effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.61(c))

Note.—The FAA has determined that this 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 1103; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. It is certified that the rule will not have a significant economic impact on a substantial number of small entities as the anticipated impact is minimal.

Issued in Fort Worth, TX, on August 3, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 82–21949 Filed 8–13–82; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 82-AWP-9]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Establishment of Transition Area, Columbia, Calif.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule designates a 700 foot transition area for Columbia Airport, Columbia, California, in order to provide controlled airspace for aircraft executing an instrument approach procedure to Columbia Airport.

DATE: Effective Date: September 2, 1982.

FOR FURTHER INFORMATION CONTACT: Thomas W. Binczak, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; Telephone (213) 536-6182.

SUPPLEMENTARY INFORMATION:

History

On June 10, 1982, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a transition area for Columbia, California, (47 FR 25155). Establishment of this transition area will provide controlled airspace for protection of instrument operations at Columbia Airport. Interested persons were invited to participate in the rulemaking proceeding by submitting comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice. Section 71.181 was published in Advisory Circular AC 70-3 dated January 29, 1982.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) establishes a transition area at Columbia, California. This transition area provides protection for instrument operations at Columbia Airport, increases air traffic safety and improves flow control procedures.

List of Subjects in 14 CFR Part 71

Transition Area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as published in Advisory Circular AC 70-3, is amended, effective 0901 G.m.t. September 2, 1982, by adding the following:

71.181 Columbia, California

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Columbia Airport (latitude 38°01'45" N., longitude 120°24'45" W.) and within three miles each side of the 211°T (195°M) bearings from the Columbia Nondirectional Radio Beacon (NDB) (latitude 38°01'52" N., longitude 120°24'46" W.) extending from the 5-mile radius area to 12 miles south of the NDB.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 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); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) is certified that it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Los Angeles, California, on July 26, 1982.

DeWitte T. Lawson, Jr.,

Acting Director, Western-Pacific Region.

[FR Doc. 82-21952 Filed 8-13-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 82-ASW-32]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Designation of Transition Area: Cleveland, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will designate a transition area at Cleveland, OK. The intended effect of the amendment is to provide adequate controlled airspace for aircraft executing a new instrument approach procedure to the Cleveland Municipal Airport. This amendment is necessary to provide protection for aircraft executing a new instrument approach procedure based on the Cleveland Nondirectional Beacon (NDB).

DATES: EFFECTIVE DATE: October 28, 1982.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

On June 14, 1982, a notice of proposed rulemaking was published in the Federal Register (47 FR 25537) stating that the Federal Aviation Administration proposed to designate the Cleveland, OK, transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections. Except for editorial changes, this amendment is that proposed in the notice.

List of Subjects in 14 CFR Part 71

Control zones and/or transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, by the Administrator, Subpart G of Part 71 § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) as republished in Advisory Circular AC 70-3 dated January 29, 1982, is amended, effective 0901 GMT, October 28, 1982, as follows:

Cleveland, OK New

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Cleveland Municipal Airport, OK (latitude 36°17'00" N. longitude 96°27'50" W.), and within 3.5 miles each side of the 206° bearing from the Cleveland NDB (latitude 36°16'17" N., longitude 96°27'43" W.) extending from the 6.5-mile radius area to 8 miles southwest of the NDB.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.61(c))

Note.—The FAA has determined that this 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 1103; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. It is certified that the rule will not have a significant economic impact on a substantial number of small entities as the anticipated impact is minimal.

Issued in Fort Worth, TX, on August 3, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 82-21950 Filed 8-13-82; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 82-ASW-31]

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Designation of Transition Area: Bonham, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will designate a transition area at Bonham, TX. The intended effect of the amendment is to provide adequate controlled airspace for aircraft executing a new instrument approach procedure to the Jones Field Municipal Airport. This amendment is necessary to provide protection for aircraft executing an instrument approach procedure using the Blue Ridge VORTAC.

EFFECTIVE DATE: October 28, 1982.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, TX 76101, telephone (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION:

History

On June 14, 1982, a notice of proposed rulemaking was published in the **Federal Register** (47 FR 25537) stating that the Federal Aviation Administration proposed to designate the Bonham, TX, transition area. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration. Comments were received without objections.

Discussion of Comments

One of the commenters, Mr. Jack Poe, Airport Manager, JP Ranch Airport, expressed a concern as to what effect the designation of a transition area would have on his airport. The designation of a 700-foot transition area as proposed by this amendment will change the floor of controlled airspace above the JP Ranch Airport from the current 1,200 feet above ground level (AGL) to 700 feet AGL. This change will alter the requirement for aircraft wishing to remain visual flight rules (VFR) and outside of controlled airspace, during marginal weather conditions, to maintain an altitude at or below 700 feet AGL instead of the previous 1,200 feet AGL. This requirement would only apply while the aircraft are transiting the airspace below the Bonham, TX, transition area. Therefore, the FAA has determined that this amendment will not have a significant impact on the JP Ranch Airport and the designation is in the best interest of the public. Except for editorial changes, this amendment is that proposed in the notice.

List of Subjects in 14 CFR Part 71

Control zones and/or transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, by the Administrator, Subpart G of Part 71, § 71.181 of the Federal Aviation Regulations (14 CFR Part 71) as republished in Advisory Circular AC 70-3 dated January 29, 1982, is amended, effective 0901 GMT, October 28, 1982, as follows:

Bonham, TX, New

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Jones Field Municipal Airport, Bonham, TX, (latitude 33°36'41" N., longitude 96°10'45" W.) and within 4.5 miles each side of the 025° radial from the Blue Ridge VORTAC extending from the 6.5-mile radius area to 42.5 miles northeast of the VORTAC.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.61(c))

Note.—The FAA has determined that this 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 1103; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. It is certified that the rule will not have a significant economic impact on a substantial number of small entities as the anticipated impact is minimal.

Issued in Fort Worth, TX, on August 3, 1982.

F. E. Whitfield,

Acting Director, Southwest Region.

[FR Doc. 82-21951 Filed 8-13-82; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Office of the Secretary

15 CFR Part 8b

Prohibition of Discrimination Against the Handicapped in Federally Assisted Programs Operated by the Department of Commerce

AGENCY: Commerce.

ACTION: Final rule; notice of effective date.

SUMMARY: The Department of Commerce publishes a technical amendment to the regulation on prohibition of discrimination against the handicapped in Federally assisted programs operated by the Department. The purpose of this amendment is to inform the public that OMB has approved the reporting and recordkeeping requirement in that regulation at §§ 8b.6(c) and 8b.17(e). The OMB control number is: 0605-0006. The expiration date of the OMB approval is January 31, 1984.

EFFECTIVE DATE: September 15, 1982.

FOR FURTHER INFORMATION CONTACT: Arthur E. Cizek, Chief, Compliance Division, Office of Civil Rights, Office of the Secretary, Department of Commerce, Washington, DC 20230, Telephone (202) 377-4994.

SUPPLEMENTARY INFORMATION: The Department's final rule implementing Section 504 of the Rehabilitation Act of 1973 was published on April 23, 1982 (47 FR 17744). The reporting and recordkeeping provisions included in that regulation were submitted to the Office of Management and Budget (OMB) at the time of publication but had not been approved by OMB. The regulation stated those requirements would not be effective until OMB approval was obtained and the public notified to that effect.

PART 8b—PROHIBITION OF DISCRIMINATION AGAINST THE HANDICAPPED IN FEDERALLY ASSISTED PROGRAMS OPERATED BY THE DEPARTMENT OF COMMERCE

For the reasons set out in the preamble, 15 CFR Part 8b is amended as follows:

§§ 8b.6 and 8b.7 [Amended]

The following OMB Control Number and expiration date are added following §§ 8b.6(c) and 8b.17(e):

OMB Control No. 0605-0006, which expires January 31, 1984.

Authority: Sec. 504, Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

Gerald R. Lucas,

Director, Office of Civil Rights.

[FR Doc. 82-22237 Filed 8-13-82; 8:45 am]

BILLING CODE 3510-BT-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 6, 10, 12, 18, 19, 22, 24, 101, 123, 146, 147, 148, and 161

[T.D. 82-145]

Conforming Amendments to the Customs Regulations

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: In accordance with Customs policy of periodically reviewing its regulations to ensure that they are current, this document makes certain conforming changes to the Customs Regulations which are necessary because of various executive, legislative, and administrative actions. The changes merely conform the regulations to existing law or practice. They are nonsubstantive and essentially are procedural.

EFFECTIVE DATE: August 16, 1982.

FOR FURTHER INFORMATION CONTACT: Marvin M. Amernick, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8237).

SUPPLEMENTARY INFORMATION:

Background

As part of its program to keep its regulations current, the Customs Service has determined that various executive, legislative, and administrative actions require conforming amendments to numerous parts of the Customs Regulations (Chapter I, Title 19, Code of Federal Regulations, 19 CFR Chapter I). Following is a list of these actions, the affected sections of the regulations, and the necessary changes:

Discussion of Changes

1. Customs Form 3137, "Application For Customs Dock Pass", has been abolished, requiring the removal of § 4.1(f), relating to applications to Customs for permission to leave a vessel and go on the dock to meet persons arriving from abroad before the vessel has been inspected by Customs and brought into the dock or anchorage at which cargo is to be unladen and until all passengers have been landed from the vessel.

2. The Customs Regulations do not list those countries which ordinarily do not permit vessels of the United States to enter and trade. To clarify § 4.20(c), relating to the assessment of tonnage taxes and light money on foreign vessels entering a port in the United States to trade, a new footnote, 3a, is being added to the table in § 4.20(c) stating that Democratic Kampuchea (Cambodia), the Democratic People's Republic of Korea (North Korea), and the Socialist Republic of Vietnam, ordinarily do not permit vessels of the United States to enter and trade.

3. Section 4.50(b), relating to vessel passenger lists, must be amended by removing a reference to § 4.51 which was deleted by T.D. 69-266, published in the **Federal Register** on December 31, 1969 (34 FR 20422).

4. Customs Form 1316, "Certificate of Record," now is designated as "Coast Guard Form-1316." Section 4.61(c), relating to clearance of vessels, must be amended to refer to the correct form.

5. Customs Form 3451, "Declaration of Foreign Repairs to Vessels or Aircraft," and Customs Form 7535, "Vessel/Aircraft Foreign Repair or Equipment," have been consolidated as Customs Form 226, "Record of Vessel/Aircraft Foreign Repair or Equipment Purchase," requiring amendments to § 6.7 (d) and (e), relating to documents for the entry of aircraft.

6. Customs Form 3861, "Report of Irregular (or Short) Delivery of Bonded Merchandise," has been abolished, requiring an amendment to § 6.22(c), relating to the transportation of air cargo.

7. Customs Form 3289, "Declaration for Free Entry of Reimported Metal Drums," has been abolished, requiring an amendment to § 10.7(b), relating to containers or holders used in the shipment or transportation of merchandise.

8. Customs Form 3313, "Declaration for Free Entry of Live Game Animals or Birds," has been abolished, requiring the removal of § 10.76(c), relating to the entry of game animals and birds.

9. Sections 1.315 through 1.322, Title 21, CFR, have been redesignated as §§ 1.83 through 1.99 of the same title. Accordingly, § 12.1(a), relating to Customs enforcement of the Federal Food, Drug, and Cosmetic Act, must be amended.

10. Various typographical errors have been found throughout Part 12, relating to the importation of special classes of merchandise, necessitating corrections to §§ 12.1(c), 12.27, 12.28(a), 12.29, 12.30, 12.37, 12.48, and 12.107(b).

11. The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services. Further, authority to issue regulations under the Federal Hazardous Substances Act was transferred from the former Department of Health, Education, and Welfare to the Consumer Product Safety Commission. Section 12.1, relating to Customs cooperation with other federal agencies, msut be amended to reflect both of these changes.

12. Sections 191.265 through 191.272, Title 21 CFR, have been redesignated as §§ 1500.265 through 1500.272, Title 16 CFR. Therefore, § 12.1(c), relating to Customs enforcement of the Federal Hazardous Substances Act, must be amended.

13. The Federal Caustic Poison Act (15 U.S.C. 401 *et seq.*) has been repealed. Accordingly, § 12.1(d), which refers to this Act, must be removed.

14. The Federal Import Milk Act, 21 U.S.C. 141-149, has been amended. Section 12.7, relating to importations of milk and cream, must be amended to note the new citation to this Act.

15. Several footnotes in Part 12, relating to special classes of merchandise, refer to the "Customs Regulations of 1943." the correct cite is the "Customs Regulations." Therefore, footnotes 6, 8, 9, 10, 11, 13, 16b, 20, and 23 of Part 12 must be amended.

16. Section 306, Tariff Act of 1930 (19 U.S.C. 1306), has been amended several times. Accordingly, it is necessary to further amend footnote 8 to § 12.8, by inserting the current text.

17. Organizational changes within the Department of Agriculture necessitate changes to references to various Departmental offices and programs set forth in §§ 12.16(b) and 12.23(d).

18. The Division of Biologics Standards has been renamed the Bureau of Biologics, under the Food and Drug Administration rather than the National Institutes of Health. Sections 12.22 and 12.23 must be amended to reflect this change.

119. Section 130.3, Title 21, CFR, has been redesignated § 312.1. Section 12.23(a) must be amended accordingly.

20. Section 73.16, Title 42, CFR, has been redesignated § 601.22, Title 21, CFR, requiring an amendment to § 12.23(a).

21. By an Act of Congress dated April 22, 1974 (Pub. L. 93-271, 88 Stat. 92), the Fish and Wildlife Service was created to assume the duties of the Bureau of Sports Fisheries and Wildlife. It is necessary to amend §§ 12.26 and 12.29 to reflect this change.

22. The positions of "collector" and "examiner" of Customs have been replaced by the position of "district

director." Section 12.26(e) must be amended to reflect this change.

23. The Endangered Species Act of 1969 has been repealed. The provisions of that Act now are set forth in the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*). Section 12.26(g) must be amended to refer to the 1973 Act.

24. Section 141, title 7, U.S.C., has been repealed, and succeeded by section 150bb, title 7, U.S.C. The parenthetical citation at the end of § 12.31, footnote 18, and the heading to § 12.31 must be amended accordingly.

25. Because section 281, title 7, U.S.C., has been amended, § 12.32 and footnote 19 thereto also must be amended.

26. Sections 4802 and 4805, title 26, U.S.C., superseding sections 2654 and 2655 of the same title, were repealed by the Tax Reform Act of 1976 (Pub. L. 94–455). It is necessary to remove: (1) § 12.35 and the references to 26 U.S.C. 4802 and 4805(a) in the parenthetical citation at the end of §§ 12.34; and (2) amend footnotes 21 and 22 to § 12.34 and 12.35, respectively.

27. Section 1263, title 18, U.S.C., has been amended. Accordingly, footnote 25 to § 12.38 must be amended.

28. Section 1305, title 19, U.S.C., prohibits the importation of articles for performing unlawful abortions but not the importation of articles related to lawful abortions. It is necessary to amend § 12.40(f) to reflect this fact.

29. Section 504, title 18, U.S.C., has been amended. The text of footnote 32 to § 12.48 must be amended to reflect the current wording of the statute.

30. Sections 85.201 through 85.204, Title 40, CFR, the regulations of the Environmental Protection Agency, have been redesignated as §§ 85.1502 through 85.1505. Therefore, references to 40 CFR 85.201 through 85.204 in § 12.73 must be amended accordingly.

31. Part 78, Title 42, CFR, the regulations of the Public Health Service, Department of Health and Human Services, has been redesignated as Part 1005, title 21, CFR, the regulations of the Food and Drug Administration, Department of Health and Human Services, requiring that references in § 12.91 be amended.

32. British Honduras has been renamed Belize. The list of countries in § 12.105, relating to pre-Columbian monumental architectural sculptures or murals, must be amended to reflect this change.

33. Sections 12.105 through 12.109, were added to the Customs Regulations by T.D. 73–119 which became effective on June 1, 1973. Section 12.107(b) must be amended to reflect the effective date of these regulations.

34. The portion of Title II, Pub. L. 92–587, quoted in § 12.109(b), has been codified at 19 U.S.C 2093(b). Section 12.109(b) must be amended to add this citation.

35. Section 18.1(b), relating to the transportation of merchandise in bond between the ports of New York, Newark, and Perth Amboy, must be amended to reflect that the area directors of Customs for New York may permit, upon request, transfer of merchandise in bond by bonded cartmen or lightermen. This section currently refers to the obsolete position of district director of Customs at New York.

36. Section 19.4(e), relating to Customs supervision of bonded warehouses, must be amended to reflect the redesignation of § 23.35 as § 161.1, by T.D. 72–213.

37. Customs Form 4475, "Drawback—Extract From Bill of Lading," has been abolished, requiring an amendment to § 22.29(f).

38. Because the date of the national observance of Veterans Day has been changed from the fourth Monday of October to November 11, § 101.6(a), relating to the closing of Customs offices on national holidays, must be amended. In addition, footnote 5 to § 24.16(b), which also lists the national holidays, is being revised to refer to § 101.6(a).

39. Customs Form 7533–A, "Inward Manifest of Baggage Car," has been replaced by Customs Form 7533, "Inward Cargo Manifest for Vessel under Five Tons," requiring amendments to §§ 123.4(d) and 123.61, relating to baggage arriving in baggage cars.

40. Customs Form 7533–B, "U.S. Customs In-Transit Manifest," expired on October 31, 1979. Customs Form 7512–B, "U.S.—Canada Transit Manifest," and Customs Form 7533–C, U.S. Customs In-Transit Manifest," are used in its place. To reflect this change, §§ 123.22(c)(1), (2), and (4) and 123.51 (d) and (e), must be amended.

41. The zone forms described in Part 146, relating to the admission, status, handling, and removal of merchandise in foreign-trade zones, have been replaced by new Customs Forms 214, 215, and 216. Amendments to various sections of Part 146 are required to reflect these changes.

42. Section 147.1(b) must be amended by removing a reference to certain Commerce Department regulations pertaining to trade fairs.

43. Customs Form 6061, "Declaration and Entry for Personal and Household Effects of U.S. Personnel," has been replaced by Customs Form 3299, "Declaration for Free Entry of Unaccompanied Articles," requiring an amendment to § 148.77. In addition, this section must be amended to show that Department of Defense Form 1252, as well as Customs Form 3299 may be used as the declaration and entry form for unaccompanied personal and household effects of military and civilian employees of the United States.

44. Item 841.10, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), provides that, upon the request of the Department of State, office supplies, equipment and other articles for the official use of representatives of foreign governments, or of personnel of public international organizations, on duty in the United States, may be imported duty-free. However, the corresponding provision in § 148.86, only pertains to articles for the official use of representatives of foreign governments.

In addition, item 842.10, TSUS, provides that upon the request of the Department of State, articles which are the property of foreign governments or public international organizations which will remain the property of such governments or of such organizations and will be used only in connection with their non-commercial functions, may be admitted duty-free. However, the corresponding provision in § 148.89 only pertains to the property of public international organizations.

In order to conform the regulations to the Tariff Schedules, changes to §§ 148.86 and 148.89 are necessary.

45. Section 161.2, relating to Customs enforcement of other agencies laws, must be amended to reflect the suspension by Pub. L. 93–110 of 31 U.S.C. 443, governing the private acquisition and use of gold.

Inapplicability of Public Notice and Delayed Effective Date Provisions

Inasmuch as these amendments merely conform the Customs Regulations to existing law or practice, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Executive Order 12291

Because this will not result in a "major rule" as defined by section 1(b) of E.O. 12291, the regulatory analysis and review prescribed by section 3 of the E.O. is not required.

Inapplicability of Regulatory Flexibility Act

This document is not subject to the provisions of sections 603 and 604 of title 5, United States Code, as added by section 3 of Pub. L. 96–354, the "Regulatory Flexibility Act." That Act

does not apply to any regulation, such as this, for which a notice of proposed rulemaking is not required by the Administrative Procedure Act (5 U.S.C. 551, *et seq.*), or any other statute.

Drafting Information

The principal author of this document was Lawrence P. Dunham, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Federal Register Thesaurus

On January 22, 1981, the Office of the Federal Register published a final rule (47 FR 7162) which requires agencies to identify major topics and categories of persons affected in their regulations by using standard terms established in the Federal Register Thesaurus of Indexing Terms.

Accordingly, the index terms listed below are applicable to this regulatory project:

List of Subjects

19 CFR Part 4

Vessels, Passenger vessels.

19 CFR Part 6

Air carriers, Air transportation, Aircraft, Airports.

19 CFR Part 10

Packaging and containers, Wildlife.

19 CFR Part 12

Agriculture, Bees, Endangered and threatened wildlife, Livestock, Meat and meat products, Pesticides and pests.

19 CFR Part 18

Customs official.

19 CFR Part 19

Warehouse.

19 CFR Part 22

Exports.

19 CFR Part 24

Accounting.

19 CFR Part 101

Organization and functions.

19 CFR Part 123

Canada, Reporting requirements.

19 CFR Part 146

Foreign-trade zones.

19 CFR Part 147

Fairs and expositions.

19 CFR Part 148

Armed forces, Foreign officials, Government employees, International organizations, Military personnel.

19 CFR Part 161

Law enforcement.

Amendments to the Regulations

Parts 4, 6, 10, 12, 18, 19, 22, 24, 101, 123, 146, 147, 148, and 161, Customs Regulations (19 CFR Parts 4, 6, 10, 12, 18, 19, 22, 24, 101, 123, 146, 147, 148, and 161), are amended as set forth below.

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: July 21, 1982.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

§ 4.1 [Amended]

1. Section 4.1 is amended by removing paragraph (f) and marking it "[Reserved]".

§ 4.20 [Amended]

2. Section 4.20(c) is amended by inserting "3a" at the end of line 2 under the heading "Foreign vessels" in the table in § 4.20(c) and inserting the following after footnote 3 in the table in § 4.20(c): "3a. The following countries ordinarily do not permit vessels of the United States to enter and trade: Democratic Kampuchea (Cambodia); Democratic People's Republic of Korea (North Korea); and, the Socialist Republic of Vietnam."

§ 4.50 [Amended]

3. Section 4.50(b) is amended by removing the phrase ", except § 4.51,".

§ 4.61 [Amended]

4. Section 4.61(c) is amended by inserting "Coast-Guard Form 1316" in place of "Customs Form 1316".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 6—AIR COMMERCE REGULATIONS

§ 6.7 [Amended]

1. Section 6.7(d) is amended by inserting "Customs Form 226" in place of "Customs Form 3415", wherever it appears.

2. Section 6.7(e) is amended by inserting "Customs Form 226" in place of "a declaration in Customs Forms 3415 or an entry on Customs Form 7535".

3. Section 6.22(c) is amended by inserting the following in place of the fifth and sixth sentences:

§ 6.22 Transportation of transit air cargo to an interior port of destination.

* * * * *

(c) * * * The report must be made to, and action promptly taken thereon by, Customs at the port of arrival in the manner specified in §§ 18.6 and 18.8 of this chapter. At the port of arrival Customs must make the determination of tax and duty due based on information in the report, in the permit copy retained there, and any necessary information obtained from the carriers.

* * *

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

§ 10.7 [Amended]

1. Section 10.7(b) is amended by inserting "and (2) there is filed in connection with the entry" in place of "and (2) there are filed in connection with the entry a declaration of the importer on Customs Form 3289 and".

§ 10.76 [Amended]

2. Section 10.76 is amended by removing paragraph (c) and marking it "[Reserved]".

PART 12—SPECIAL CLASSES OF MERCHANDISE

§ 12.1 [Amended]

1. Section 12.1(a) is amended by inserting "Secretary of Health and Human Services" in place of "Secretary of Health, Education, and Welfare" and "21 CFR 1.83–1.99" in place of "21 CFR 1.315–1.322".

2. Section 12.1(c) is revised to read as follows:

§ 12.1 Cooperation with certain agencies; joint regulations.

* * * * *

(c) *Federal Hazardous Substances Act.* The importation of hazardous substances, misbranded hazardous substances, or banned hazardous substances as defined in section 2 of the Federal Hazardous Substances Act, as amended (15 U.S.C. 1261), is governed by regulations issued under the authority of sections 10(b) and 14 of the Act, as amended (15 U.S.C. 1269, 1273), by the Consumer Product Safety Commission (16 CFR 1500.265–272).

3. Section 12.1 is further amended by removing paragraph (d).

§ 12.7 [Amended]

4. Section 12.7(a) is amended by inserting a comma in place of the

semicolon after the citation "44 Stat. 1101" and adding "as amended;" immediately after the comma.

5. Sections 12.7(a) and (b) are amended by substituting "Department of Health and Human Services" for "Department of Health, Education, and Welfare."

6. Footnote 6 to § 12.7 is amended by removing "of 1943".

§ 12.8 [Amended]

7. Sections 12.8 (a) and (b) are amended by substituting "Food Safety and Inspection Service" for "Food Safety and Quality Service" wherever the latter term appears.

8. Footnote 8 to § 12.8, paragraph (a) is revised to read as follows:

[8](a) If the Secretary of Agriculture determines that rinderpest or foot-and-mouth disease exists in any foreign country, he shall officially notify the Secretary of the Treasury and give public notice thereof, and thereafter, and until the Secretary of Agriculture gives notice in a similar manner that such disease no longer exists in such foreign country, the importation into the United States of cattle, sheep, or other ruminants, or swine, or of fresh, chilled, or frozen meat of such animals, from such foreign country, is prohibited: *Provided,* That wild ruminants or swine may be imported from any such country upon such conditions, including post entry conditions, to be prescribed in import permits or in regulations, as the Secretary may impose for the purpose of preventing the dissemination of said diseases into or within the United States: *And provided further,* That the subsequent distribution, maintenance, and exhibition of such animals in the United States shall be limited to zoological parks approved by said Secretary as meeting such standards as he may by regulation prescribe for the purpose of preventing the dissemination of said diseases into or within the United States. The Secretary may at any time seize and dispose of any such animals which are not handled in accordance with the conditions imposed by him or which are distributed to or maintained or exhibited at any place in the United States which is not then an approved zoological park, in such manner as he deems necessary for said purpose.

9. Footnote 8 to § 12.8 is further amended by removing paragraph (b) and marking it "[Reserved]" and removing "of 1943" from paragraph (c).

§ 12.16 [Amended]

10. Section 12.16(a) is amended by revising the cite to read "section 402(b) of the Federal Seed Act of August 9, 1939 (7 CFR 201).[9]"

11. Section 12.16(b) is amended by inserting the term "Livestock, Meat, Grain, and Seed Division," in place of the term "Grain Division,".

12. Footnote 9 to § 12.16 is amended by removing "of 1943".

§ 12.17 [Amended]

13. Footnote 10 to § 12.17 is amended by removing "of 1943".

§ 12.21 [Amended]

14. Section 12.21 is amended by substituting "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare."

§§ 12.22 and 12.23 [Amended]

15. Sections 12.22 and 12.23 are amended by inserting the term "Bureau of Biologics" in place of "Division of Biologics Standards" wherever the latter appears.

16. Section 12.22 is further amended by inserting "Food and Drug Administration, 8800 Rockville Pike, Bethesda, Md. 20014" in place of "National Institutes of Health, Bethesda, Md. 20014" in the third sentence.

17. Section 12.23(a) is amended by inserting "312.1" in place of "130.3", "21 CFR 312.1" in place of "21 CFR 130.3", "601.22" in place of "73.16", and "21 CFR 601.22" in place of "42 CFR 73.16".

18. Section 12.23(d) is amended by inserting the term "Veterinary Services, Animal and Plant Health Inspection Service (APHIS)" in place of "Animal Health Division".

§ 12.24 [Amended]

19. Footnote 11 to § 12.24 is amended by removing "of 1943".

§ 12.26 [Amended]

20. Section 12.26 is amended by removing "Bureau of Sport Fisheries and Wildlife" wherever it appears. Further, wherever "Bureau of Sport Fisheries and Wildlife" appears without being followed by "Fish and Wildlife Service," the latter term shall be inserted in place of "Bureau of Sport Fisheries and Wildlife".

21. Section 12.26(e) is amended by inserting "district director" in place of "examiner", "collector", and "collector of Customs".

22. Section 12.26(g) is amended by inserting "Endangered Species Act of 1973, 16 U.S.C. 1531" in place of "Endangered Species Conservation Act of 1969, 16 U.S.C. 688cc" in the first sentence.

§ 12.28 [Amended]

23. Section 12.28 is amended by removing "(a)" at the beginning of the text and by inserting "in the manner" in place of "it (sic) either manner" within the clause beginning "there is presented documentation".

§ 12.29 [Amended]

24. Footnote 16 to § 12.29 is amended by inserting "severed" in place of "served" in the last paragraph of 2(c)(ii).

25. Section 12.29(c) is amended by removing "Bureau of Sport Fisheries and Wildlife".

26. Footnote 16b to § 12.29 is amended by removing "of 1943".

§ 12.30 [Amended]

27. Footnote 17b to § 12.30 is amended by inserting the small letter "l" in place of the number "1" in the parenthetical expression following "16 U.S.C. 916–916".

§ 12.31 [Amended]

28. Footnote 18 to § 12.31 is revised to read as follows:

[18](a) "No person shall knowingly move any plant pest from a foreign country into or through the United States, or interstate, or knowingly accept delivery of any plant pest moving from any foreign country into or through the United States, or interstate, unless such movement is authorized under general or specific permit from the Secretary and is made in accordance with such conditions as the Secretary may prescribe in the permit and in such regulations as he may promulgate under this section to prevent the dissemination into the United States, or interstate, of plant pests." (7 U.S.C. 150bb(a)).

(b) "The Secretary may refuse to issue a permit for the movement of any plant pest when, in his opinion, such movement would involve a danger of dissemination of such pests. The Secretary may permit the movement of host materials otherwise barred under the Plant Quarantine Act when they must necessarily accompany the plant pest to be moved." (7 U.S.C. 150bb(b)).

(c) "As used in this chapter, except where the context otherwise requires:"

"Plant pest" means any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products or plants." (7 U.S.C. 150aa).

29. The heading of § 12.31 is amended by inserting "Plant pests." in place of "Injurious insects."

§ 12.32 [Amended]

30. Section 12.32 is amended by removing "adult" wherever it appears.

31. Footnote 19 to § 12.32 is revised to read as follows:

[19](a) In order to prevent the introduction and spread of diseases and parasites harmful to honeybees, and the introduction of genetically undesirable germ plasm of honeybees, the importation into the United States of all honeybees is prohibited, except that honeybees may be imported into the United States—

(1) By the United States Department of Agriculture for experimental or scientific purposes, or

(2) From countries determined by the Secretary of Agriculture—

(A) To be free of diseases or parasites harmful to honeybees, and undesirable species or subspecies of honeybees; and

(B) To have in operation precautions adequate to prevent the importation of honeybees from other countries where harmful diseases or parasites, or undesirable species or subspecies, of honeybees, exist.

(b) Honeybee semen may be imported into the United States only from countries determined by the Secretary of Agriculture to be free of undesirable species or subspecies of honeybees, and which have in operation precautions adequate to prevent the importation of such undesirable honeybees and their semen.

(c) Honeybees and honeybee semen imported pursuant to subsections (a) and (b) of this section shall be imported under such rules and regulations as the Secretary of Agriculture and the Secretary of the Treasury shall prescribe.

(d) Except with respect to honeybees and honeybee semen imported pursuant to subsections (a) and (b) of this section, all honeybees or honeybee semen offered for import or intercepted entering the United States shall be destroyed or immediately exported.

(e) As used in this chapter, the term "honeybee" means all life stages and the germ plasm of honeybees of the genus Apis, except honeybee semen." (7 U.S.C. 281).

§ 12.34 [Amended]

32. Section 12.34(e) is amended by removing "68A Stat. 569, 570, sec. 101, 76 Stat. 72; 26 U.S.C. 4802, 4805(a);" from the parenthetical citation following the text.

33. Footnote 20 to § 12.34 is amended by removing "of 1943". Footnote 21 to § 12.34 is amended by removing the first two paragraphs.

§ 12.35 [Removed and reserved]

34. Section 12.35 is removed and marked "[Reserved]" and footnote 22 thereto is removed and marked "[Reserved]".

§ 12.36 [Amended]

35. Footnote 23 to § 12.36 is amended by removing "of 1943".

§ 12.37 [Amended]

36. Footnote 24 to § 12.37 is amended by adding the symbol "* * * * *" above the text beginning with "(a)" and removing the same symbol between paragraph (a) and the item headed "(1)".

§ 12.38 [Amended]

37. Section 12.38 is amended by inserting "shipments" in place of "packages" in the heading and the text.

38. The first paragraph of footnote 25 to § 12.38 is revised to read as follows:

[25] Whoever knowingly ships into any place within the United States any package containing any spirituous, vinous, malted, or other fermented liquor, or any compound containing any spirituous, vinous, malted, or other fermented liquor fit for use for beverage purposes, unless such shipment is accompanied by copy of a bill of lading, or other document showing the name of the consignee, the nature of its contents, and the quantity contained therein, shall be fined not more than $1,000 or imprisoned not more than one year, or both. (18 U.S.C. 1263).

§ 12.40 [Amended]

39. Section 12.40(f) is amended by adding "unlawful" before "abortion".

§ 12.48 [Amended]

40. Footnote 31 to § 12.48 is amended by removing the letter "s" from "obligations".

41. Footnote 32 to § 12.48 is revised to read as follows:

[32] Notwithstanding any other provision of this chapter, the following are permitted:

(1) The printing, publishing, or importation, or the making or importation of the necessary plates for such printing or publishing, of illustrations of—

(A) Postage stamps of the United States,

(B) Revenue stamps of the United States,

(C) Any other obligation or other security of the United States, and

(D) Postage stamps, revenue stamps, notes, bonds, and any other obligation or other security of any foreign government, bank, or corporation, for philatelic, numismatic, educational, historical, or newsworthy purposes in articles, books, journals, newspapers, or albums (but not for advertising purposes, except illustrations of stamps and paper money in philatelic or numismatic advertising of legitimate numismatists and dealers in stamps or publishers of or dealers in philatelic or numismatic articles, books, journals, newspapers, or albums). Illustrations permitted by the foregoing provisions of this section shall be made in accordance with the following conditions—

(i) All illustrations shall be in black and white, except that illustrations of postage stamps issued by the United States or by any foreign government may be in color;

(ii) All illustrations (including illustrations of uncanceled postage stamps in color) shall be of a size less than three-fourths or more than one and one-half, in linear dimension, of each part of any matter so illustrated which is covered by subparagraph (A), (B), (C), or (D) of this paragraph, except that black and white illustrations of postage and revenue stamps issued by the United States or by any foreign government and colored illustrations of canceled postage stamps issued by the United States may be in the exact linear dimension in which the stamps were issued; and

(iii) The negatives and plates used in making the illustrations shall be destroyed after their final use in accordance with this section.

(2) The making or importation, but not for advertising purposes except philatelic advertising, of motion-picture films, microfilms, or slides, for projection upon a screen or for use in telecasting, of postage and revenue stamps and other obligations and securities of the United States, and postage and revenue stamps, notes, bonds, and other obligations or securities of any foreign government, bank, or corporation. No prints or other reproductions shall be made from such films or slides, except for the purposes of paragraph (1), without the permission of the Secretary of the Treasury.

For the purposes of this section the term "postage stamp" includes "postage meter stamps." (18 U.S.C. 504).

§ 12.73 [Amended]

42. Section 12.73(b) is amended in the following manner:

a. In subparagraph (vi), "85.1502" is inserted in place of "85.201";

b. In subparagraph (ix), "85.1503" is inserted in place of "85.202";

c. In subparagraph (x), "85.1504" is inserted in place of "85.203";

d. In subparagraph (xi), "85.1505" is inserted in place of "85.204".

§ 12.91 [Amended]

43. Section 12.91(a) and the heading are amended by inserting "Department of Health and Human Services" in place of "Department of Health, Education, and Welfare", and "21 CFR, Part 1005" in place of "42 CFR, Part 78".

44. Section 12.91(b)(2) is amended by inserting "Health and Human Services" in place of "Health, Education, and Welfare", and "21 CFR 1005.21" in place of "42 CFR 78.607".

45. Section 12.91(c) is amended by inserting "Health and Human Services" in place of "Health, Education, and Welfare", and "21 CFR 1005.10" in place of "42 CFR 78.604".

46. Section 12.91(d) is amended by inserting "Health and Human Services" in place of "Health, Education, and Welfare", and "21 CFR 1005.23" in place of "42 CFR 78.604".

§ 12.105 [Amended]

47. Section 12.105(a) is amended by adding "Belize," immediately before "Bolivia," and by removing "British Honduras,".

§ 12.107 [Amended]

48. Section 12.107(b) is amended by inserting "June 1, 1973" in place of "August 16, 1982".

§ 12.109 [Amended]

49. Section 12.109(b) is amended by inserting a comma in place of the colon after "Public Law 92–587" and adding "19 U.S.C. 2093(b):" immediately after the comma.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

§ 18.1 [Amended]

Section 18.1(e) is amended by inserting "appropriate area director" in place of "district director at New York" and "district director", wherever they appear.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

§ 19.4 [Amended]

Section 19.4(b) is amended by inserting "§ 161.1" in place of "§ 23.35".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 22—DRAWBACK

Section 22.29(f) is revised to read as follows:

§ 22.29 Entry and completion thereof.

* * * * *

(f) District directors may issue, in memorandum form, extracts from bills of lading filed with drawback entries.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

Section 24.16(b) is amended by revising footnote 5 to read as follows:

[5] See § 101.6(a) of this chapter.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 101—GENERAL PROVISIONS

§ 101.6 [Amended]

Section 101.6(a)(7) is amended by substituting "The eleventh day of November." for "The fourth Monday of October."

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

§ 123.4 and 123.6 [Amended]

1. Sections 123.4(d) and 123.61 are amended by inserting "Customs Form 7533" in place of "Customs Form 7533–A".

§§ 123.22 and 123.51 [Amended]

2. Sections 123.22(c) (1), (2), and (4), and § 123.51 (d) and (e), are amended by inserting "Customs Form 7512–B or 7533–C" in place of "Customs Form 7533–B".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 146—FOREIGN-TRADE ZONES

§ 146.12 [Amended]

1. The heading to § 146.12(a) is amended by inserting "Customs Form 214" in place of "zone Form D" and the section is amended by inserting "Customs Form 214, and approval of the permit application." In place of "zone Form D, Application to Admit Merchandise into Foreign-Trade Zone, and the issuance of a permit by the district director".

§§ 146.12, 146.14, 146.22, 146.25, 146.47 [Amended]

2. Sections 146.12 (b)(2); 146.14 (b) and (d); 146.22 (b) and (c); 146.25 (b), (c)(1), (2), and (d); and, 146.47(d)(1) are amended by inserting "Customs Form 214" in place of "zone Form D".

§ 146.21 [Amended]

3. Section 146.21(b) is amended by inserting "Customs Form 214" in place of "zone Form B at the time of filing the application on zone Form D (see section 146.12)".

§§ 146.21, 146.42, 146.45 [Amended]

4. Sections 146.21 (c)(1) and (c)(3)(i), 146.42 (b)(1) and (c)(1), 146.45 (b)(2), (c)(2), (c)(5), and (d) are amended by inserting "Customs Form 214" in place of "zone Form B" and/or "Form B" wherever it appears.

§§ 146.42 and 146.47 [Amended]

5. Sections 146.42(c)(1), 146.47 (b), (c), (d)(2), and (e), are amended by inserting "Customs Form 215" in place of "zone Form C" and/or "Form C" wherever it appears.

§§ 146.32 and 146.33 [Amended]

6. Sections 146.32(a) and 146.33(a) are amended by inserting "Customs Form 216" in place of "zone Form E".

§ 146.46 [Amended]

7. Section 146.46(b)(1)(ii) is amended by inserting "in a letter of application for a certificate of identification containing information sufficient to properly identify the merchandise, including the zone lot number, number of packages, description, quantity, measurement, value, and zone status of the merchandise" in place of "certificate on zone Form F covering identification, as shown by Customs records, of the privileged merchandise".

§ 146.48 [Amended]

8. Section 146.48(d) is amended by inserting "in accordance with the procedure set forth in § 146.46(b)(1)(ii) of this part" in place of "on zone Form F".

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 147—TRADE FAIRS

Section 147.1 is amended by removing the parenthetical sentence at the end of paragraph (b).

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. Section 148.77(b)(2) is revised to read as follows:

§ 148.77 Entry of effects on termination of assignment to extended duty, or on evacuation.

(b) *Declaration and entry* * * *

(2) *Designated official.* Customs Form 3299 or Department of Defense Form 1252 executed on behalf of the owner of unaccompanied personal and household effects by either a United States Dispatch Agent or a designated responsible military official in his own name, may be accepted by the Customs officer as the declaration and entry if there is a valid reason evident from the owner's travel orders or information at hand why the United States Government agency concerned is unable to present Department of Defense Form (DD) 1252 or Customs Form 3299 executed by the owner. The date of the owner's last departure from the United States need not be indicated on the form. The following statement shall be added across the face or to the back of Customs Form 3299 or Department of Defense Form 1252.

This form is completed on behalf of (Name of Government employee) Travel orders and information on hand in this office show that the named person has met all requirements of section 148.74, Customs Regulations, and is entitled to the benefits of item 817.00, Tariff Schedules of the United States. The shipment imported consists of nothing but personal and household effects of the named person, which effects are not imported for sale or as an accommodation for others.

§ 148.86 [Amended]

2. Section 148.86 is amended by removing the period at the end of the section heading and adding "and public international organizations." Section 148.86 is further amended by removing the comma between "governments," and "may" and by inserting in its place "or of personnel of public international organizations,".

§ 148.89 [Amended]

3. Section 148.89 is amended by removing the period at the end of the section heading and adding "and foreign governments.", and by inserting "or of foreign governments" between "148.87" and "shall" in paragraph (a).

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

PART 161—GENERAL ENFORCEMENT PROVISIONS

§ 161.2 [Amended]

Section 161.2(b) is amended by removing "31 U.S.C. 443," in the parenthetical at the end of the section.

(R.S. 251, as amended, sec. 624, 46 Stat. 759 (19 U.S.C. 66, 1624))

[FR Doc. 82-22059 Filed 8-13-82; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Computing Primary Insurance Amounts; Reorganization of Subpart, and Changes in Computing Dropout Years for Workers Entitled to Disability Insurance Benefits

Correction

In FR Doc. 82-19012 appearing on page 30731 in the issue for Thursday, July 15, 1982, make the following changes:

1. On page 30731, second column, third full paragraph, third line from the bottom, "enhence should read "enhance".

2. On page 30737, second column, § 404.211(e)(2), eighth line from the top, remove the period after "earnings".

3. On page 30746, in the table, make the following changes:

(a) Column I (At least—), "32.60" should read "32.61".

(b) Column III (At least—), "$7.7" should read "$77".

(c) Column V, "219.20" and "338.0" should read "219.30" and "338.00" respectively.

4. On page 30747, in the table, Column V, "733.30" should read "733.40".

5. On page 30748, in the table, Column IV, "582,20" should read "582.20".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner—Federal Housing Administration

24 CFR Part 201

[Docket No. R-82-1019]

Mortgage Insurance Loans; Changes in Interest Rates

AGENCY: Federal Housing Administration, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the HUD/FHA maximum allowable finance charge on Title I mobile home loans, property improvement loans, and combination and mobile home lot loans as well as historic preservation loans. This action by HUD is designed to bring the maximum interest rate and financing charges on HUD/FHA-insured loans into line with market rates and help assure an adequate supply of and demand for FHA financing.

EFFECTIVE DATE: August 16, 1982.

FOR FURTHER INFORMATION CONTACT: John L. Brady, Director, Office of Title I Insured Loans, Office of Single Family Housing, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410 (202-755-6680).

SUPPLEMENTARY INFORMATION: The following miscellaneous amendments have been made to this chapter to decrease the maximum interest rate which may be charged on loans insured by this Department. Maximum finance charges on property improvement loans have been lowered from 19.00 percent to 18.50 percent, the finance charge on mobile home loans lowered from 18.00 percent to 17.50 percent, and the finance charge on combination loans for the purchase of a mobile home and a developed or undeveloped lot has been lowered from 17.50 percent to 17.00 percent. The maximum charge on historic preservation loans has been lowered from 19.00 to 18.50 percent.

The Secretary has determined that such changes are immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change, in accordance with his authority contained in 12 U.S.C. 1709-1, as amended. The Secretary has, therefore, determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this amendment effective immediately.

This is a procedural and administrative determination as set forth in the statutes and as such does not require a determination of environmental applicability.

List of Subjects in 24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Mobile homes, Manufactured homes and lots.

Accordingly, Chapter II is amended as follows:

PART 201—PROPERTY IMPROVEMENT AND MOBILE HOME LOANS

Subpart A—Eligibility Requirements—Property Improvement Loans

1. Section 201.4(a) is amended to read as follows:

§ 201.4 Financing charges.

(a) *Maximum financing charges.* The maximum permissible financing charge exclusive of fees and charges as provided by paragraph (b) of this section which may be directly or indirectly paid to, or collected by, the insured in connection with the loan transaction, shall not exceed 18.50 percent annual rate. No points or discounts of any kind may be assessed or collected in connection with the loan transaction. Finance charges for individual loans shall be made in accordance with tables of calculation issued by the Commissioner.

* * * * *

Subpart B—Eligibility Requirements—Mobile Home Loans

1. Section 201.540(a) is amended to read as follows:

§ 201.540 Financing charges.

(a) *Maximum financing charges.* The maximum permissible financing charge which may be directly or indirectly paid to, or collected by, the insured in connection with the loan transaction, shall not exceed 17.50 percent simple interest per annum. No points or discounts of any kind be assessed or collected in connection with the loan transaction, except that a one percent origination fee may be collected from the borrower. If assessed, this fee must be included in the finance charge. Finance charges for individual loans shall be made in accordance with tables of calculation issued by the Commissioner.

* * * * *

Subpart D—Eligibility Requirements—Combination and Mobile Home Lot Loans

2. Section 201.1511(a)(1) is amended to read as follows:

§ 201.1511 Financing charges.

(a) *Maximum financing charges.* * * *

Subpart E—Eligibility Requirements—Historic Preservation Loans

(1) 17.00 percent per annum.

* * * * *

4. Section 201.1625(a) is amended to read as follows:

§ 201.1625 Financing charges.

(a) *Maximum financing charges.* The maximum permissible financing charge, exclusive of fees and charges as provided by paragraph (b) of this section, which may be directly or indirectly paid to, or collected by the insured in connection with the loan transaction, shall not exceed an 18.50 percent annual rate. No points or discounts of any kind may be assessed or collected in connection with the loan transaction. Finance charges for individual loans shall be made in accordance with tables of calculation issued by the Commissioner.

* * * * *

(Section 3(a), 82 Stat. 113; 12 USC 1709–1; Section 7 of the Department of Housing and Urban Development Act, 42 USC 3534(d))

Issued at Washington, D.C., August 6, 1982.

Philip Abrams,

General Deputy Assistance Secretary for Housing, Deputy Federal Housing Commissioner.

[FR Doc. 82-22188 Filed 8-13-82; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF-108; Ref: Notice No. 379]

Paicines Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in San Benito County, California to be known as "Paicines." The Bureau of Alcohol, Tobacco and Firearms (ATF) believes the establishment of Paicines as a viticultural area and its subsequent use as an appellation of origin on wine labels and in wine advertisements will allow wineries in the area to better designate where their wines come from and will enable consumers to better identify the wines from this area.

EFFECTIVE DATE: September 15, 1982.

FOR FURTHER INFORMATION CONTACT: Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202–566–7626).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definite viticultural areas. The regulations also allow the name of an approved viticultural area to be used as a appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

Almaden Vineyards petitioned ATF to establish a viticultural area in San Benito County, California, to be named "Paicines."

In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 379, in the **Federal Register** on August 6, 1981 (46 FR 40045), proposing the establishment of the Paicines viticultural area.

Historical and Current Evidence of the Name

The name of the area, Paicines, was well documented by the petitioner. After evaluating the petition, ATF believes that the Paicines viticultural area has a unique historical identity and that the name Paicines is the most appropriate name for the area.

Geographical Evidence

In accordance with 27 CFR 4.25a(e)(2), a viticultural area should possess geographical features which distinguish the viticultural features of the area from surrounding areas.

Paicines is located about 17 miles north of Pinnacles National Monument and Park and consists of about 4,500 acres of grape-growing area. On the western side are the Cienega Vineyards and the Gabilan Mountain Range which separate Paicines from San Lucas and King City. The San Luis Dam and Pacheco are on the northeast side, and new Idria and the Panoche Valley are on the eastern edge. The San Benito River forms a portion of the western boundary and continues on through the vineyards.

The Paicines area is in a wind tunnel of cool ocean air flowing to the San Joaquin Valley. Because of the relative lack of trees adjacent to the vineyard areas, the Paicines area is open to the direct influence of these winds. In the afternoon, Paicines takes advantage of the slight cooling breeze that comes in off the Monterey Valley. At night Paicines is more protected from the evening fog than much of the surrounding area because of its open location. However, during periods of extremely heavy fog, the Paicines area holds the fog longer than much of the nearby area, including Cienega Valley.

Elevation ranges from 500 feet to 1,200 feet above sea level. The average elevation is lower than much of the surrounding area which is closer to the Gabilan Mountain Range. The rainfall pattern in the Paicines area differs greatly from the area surrounding the Gabilan Mountain Range. Due to the greater distance of the Paicines area from the Gabilan Mountains, Paicines often gets less rain than much of the area closer to the Gabilan Mountain Range. Annual rainfall in the Paicines area is between 12 and 15 inches.

During winter the relative humidity in the Paicines area is more than 50 percent most of the time. In spring the relative humidity averages 60 to 75 percent at night and 40 to 50 percent during the day. Summers are quite dry; the average relative humidity in the daytime is about 20 to 25 percent. In fall, readings of 45 to 60 percent are common at night, but during the day readings generally range from 30 to 50 percent. The 10-year average temperature is around 2750 degree-days.

The Paicines area is comprised of various soil associations including Sorrento, Mocho, Clear Lake, Willows, Rincon, Antioch, Diablo, Soper, San Benito and Linne. The various soils in this area are generally well drained, of various depths, and root zones are quite deep. There are some steady alluvial fans and terrace escarpments with rapid runoff.

Boundaries

The boundaries proposed by the petitioner are adopted because they delineate an area which has climatic

and topographic features that distinguish it from surrounding areas.

Comments

No comments were received during the comment period. ATF has received no information from any source indicating opposition to the petition.

Miscellaneous

ATF does not wish to give the impression by approving the Paicines viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being viticulturally distinct from surrounding areas, not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Paicines wines.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because this final rule will not have a significant economic impact on a substantial number of small entities. This final rule is not expected to: have significant secondary or incidental effects on a substantial number of small entities; or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Disclosure

A copy of the petition and appropriate maps with boundaries marked are available for inspection during normal business hours at the following location: ATF Reading Room, Room 4405, Office of Public Affairs and Disclosure, 12th and Pennsylvania Avenue NW., Washington, D.C.

Drafting Information

The principal author of this document is Robert L. White, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel in other offices of the Bureau have participated in the preparation of this document, both in matters of substance and style.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Accordingly, under the authority contained in section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended; 27 U.S.C. 205), 27 CFR Part 9 is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Par. 1. The table of sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.39. As amended, the table of sections reads as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.39 Paicines.

* * * * *

Par. 2. Subpart C is amended by adding § 9.39. As amended, Subpart C reads as follows:

Subpart C—Approved American Viticultural Areas

§ 9.39 Paicines.

(a) *Name.* The name of the viticultural area described in this section is "Paicines."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Paicines viticultural area are the three U.S.G.S. maps. They are titled:

(1) "Tres Pinos Quadrangle, California," 7.5 minute series (1971);

(2) "Paicines Quadrangle, California," 7.5 minute series (1968); and

(3) "Cherry Peak Quadrangle, California," 7.5 minute series (1968).

(c) *Boundaries.* The Paicines viticultural area is located in San Benito County, California. The beginning point is the northwestern-most point of the proposed area at Township 14 South, Range 6 East, Section 3, northwest corner, located on U.S.G.S. map "Tres Pinos Quadrangle."

(1) From the beginning point the boundary runs east along the north border of Sections 3, 2, and 1, Township 14 South, Range 6 East;

(2) Thence south along the east border of Section 1, Township 14 South, Range 6 East; thence east along the north border of Section 7, Township 14 South, Range 7 East; thence south along the east border of Section 7, Township 14 South, Range 7 East;

(3) Thence continuing south along the east border of Section 18, Township 14 South, Range 7 East; thence east along the north border of Section 20, Township 14 South, Range 7 East; thence south along the east border of Sections 20, 29 and 32, Township 14 South, Range 7 East;

(4) Thence continuing south along the east border of Section 5, Township 15 South, Range 7 East; thence south along the east border of Sections 8 and 17, Township 15 South, Range 7 East to latitude line 36°37'30";

(5) Thence west along latitude line 36°37'30" to the west border of Section 18, Township 15 South, Range 7 East;

(6) Thence north along the west border of Sections 18 and 7, Township 15 South, Range 7 East; thence west along the south border of Section 1, Township 15 South, Range 6 East; thence north along the west border of Section 1, Township 15 South, Range 6 East to the 800-foot elevation contour line and then in a generally northwest direction along this 800-foot contour line to where it intersects with the south border of Section 35, Township 14 South, Range 6 East;

(7) Thence west along the south border of Section 35, Township 14 South, Range 6 East; thence north along the east border of Section 34, Township 14 South, Range 6 East; thence in a northwest direction along the northeast border of Section 34, Township 14 South, Range 6 East; thence continuing in a northwest direction along the east border of Section 27, Township 14 South, Range 6 East;

(8) Thence continuing in a northwest direction to the northeast border of Section 22, Township 14 South, Range 6 East to where an unnamed, unimproved dirt road intersects the northeast border; thence east and then northwest along the unimproved dirt road to the intersection with the San Benito River; thence following the San Benito River and meandering north to the intersection

with the east border of Section 4, Township 14 South, Range 6 East;

(9) Thence continuing north along the east border of Section 4, Township 14 South, Range 6 East to the point of beginning.

Signed: July 2, 1982.

Stephen E. Higgins,

Acting Director.

Approved: July 20, 1982.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 82-22272 Filed 8-13-82; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD 09-82-04]

Special Anchorage Area at Fish Creek Harbor, Fish Creek, WI

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard at the request of the Town Board of Gibraltar, WI is amending the Anchorage Regulations by establishing a Special Anchorage Area in Fish Creek Harbor, Fish Creek, WI.

This Special Anchorage Area has been requested in order to reduce harbor congestion and enhance navigational safety.

Establishment of this Special Anchorage Area will eliminate the necessity for displaying anchor lights on vessels of less than 65 feet in length while anchored within the area.

EFFECTIVE DATE: This amendment becomes effective on August 16, 1982.

FOR FURTHER INFORMATION CONTACT: Ensign Steven J. Boyle, Marine Port and Environmental Safety Branch, Ninth Coast Guard District, 1240 East 9th Street, Cleveland, OH 44199 or phone (216) 522-3918.

SUPPLEMENTARY INFORMATION: On 13 May 1982, the Coast Guard published a notice of proposed rulemaking in the Federal Register for these regulations (47 FR 20633). Interested persons were requested to submit comments, and no comments were received.

Drafting Information: The principal persons involved for drafting this rule were Ensign Steven J. Boyle, Marine Port and Environmental Safety Branch and Lieutenant Commander Arthur R. Butler, Assistant Legal Officer, Ninth Coast Guard District.

Summary of Final Evaluation: An environmental review of the final rule has been performed by the Planning Officer, Ninth Coast Guard District, who determined that the proposed action will have no significant impact. Preparation of an environmental assessment was not required since the action was found to be categorically excluded in accordance with 2-B-3(g) COMDTINST M16475.1A (National Environmental Policy Act). Also, the establishment of such special anchorage is neither a matter on which there is substantial public interest or controversy, nor does it involve impacts on business competition, State or local government, or the regulations of other programs and agencies.

The Town Board of Gibraltar understands and accepts the principle that this mooring area is available for use of the general public. No restrictions on the use by the general public have been established nor contemplated.

This final rule has been reviewed under the provisions of Executive Order 12291 and has been determined not to be a major rule. In addition, this rule is considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 22 May 1980). An economic evaluation has not been conducted since, for the reasons discussed above, its impact is expected to be minimal. In accordance with Section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

PART 110—ANCHORAGE REGULATIONS

In consideration of the foregoing, Part 110 of Title 33 of the Code of Federal Regulations is amended by adding § 110.79c to read as follows:

§ 110.79c Fish Creek Harbor, Fish Creek, WI.

The area of Fish Creek Harbor north of the public swimming beach within the following boundary: Beginning at longitude 87°14'05" and latitude 45°07'44" thence 230°30', 200.00 feet; thence 315°50', 290.000 feet; thence 30°40', 330.00 feet; thence 326°00', 330.00 feet; thence 52°10', 620.00 feet; thence 160°30', 610.00 feet; thence 139°10', 185 feet; thence 226°10', 438.81 feet; thence 270°10', 65.12 feet to point of beginning.

(33 U.S.C. 2071; 49 CFR 1.46(n)(14), 33 CFR 1.05-1(g))

Dated: August 2, 1982.

Henry H. Bell,

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

[FR Doc. 82-22263 Filed 8-13-82; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD 82-020]

Fleeting Facilities; Towboat Attendance of Barges

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This document amends the barge fleeting regulations for the lower Mississippi River. It changes the frequency guarding requirement for the person in charge of certain specified towboats on the lower Mississippi River during high water. This revision reflects changes in the vessel bridge-to-bridge communication frequency previously enacted by Federal Communications Commission (FCC) regulations.

EFFECTIVE DATE: This rule becomes effective on August 16, 1982.

FOR FURTHER INFORMATION CONTACT: LT M. W. Brown, Commander, Eighth Coast Guard District (mps), Hale Boggs Federal Bldg., Room 1341, 500 Camp Street, New Orleans, LA 70130, (504) 589-6901; or ENS R. B. Strobridge, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. 20593, (202) 426-4958.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this rule are Ensign R. B. Strobridge, Project Manager and Lieutenant Mark Hanlon, Project Attorney, Office of Chief Counsel.

This amendment is editorial in nature. It merely conforms Coast Guard regulations to those of the FCC, which is the agency authorized to prescribe radio frequencies. Affected entities are already utilizing this frequency. Therefore, under 5 U.S.C. 553, good cause exists for omitting notice and comment and making this rule effective immediately.

On August 20, 1979, the bridge-to-bridge communication frequency was changed, at the request of the Coast Guard, from Channel 13 (156.65 MHz) VHF-FM to Channel 67 (156.375 MHz) VHF-FM on the lower Mississippi River from Southwest Pass to mile 242.4, above Head of Passes. The change was promulgated by regulations issued by

the FCC under Part 83 of Title 47, Code of Federal Regulations (44 FR 29073). The purpose of the frequency change was to replace the congested Channel 13 with a second frequency for bridge-to-bridge communications.

The current barge fleeting regulations in 33 CFR Part 165 require that, during high water, the person in charge of a towboat attending a barge fleet (consisting of eight or more barges) on the lower Mississippi River between mile 88 and mile 127, above Head of Passes, maintain a continuous radio guard on Channel 13 VHF–FM.

This amendment to Part 165 reflects the bridge-to-bridge frequency change on the lower Mississippi River. It updates the barge fleeting regulations by requiring that, during high water, the person in charge of a towboat attending a barge fleet on the lower Mississippi River between mile 88 and mile 127, above Head of Passes, maintain a continuous radio guard on the frequency specified by the FCC in 47 CFR Part 83.

Barge fleeting regulations were formerly located in Part 128 of Title 33, Code of Federal Regulations, under Regulated Navigation Areas. These regulations have been recodified and published as a new Part 165, entitled "Regulated Navigation Areas and Limited Access Areas"; (CGD 79–034, July 8, 1982, 47 FR 29659.). Old § 128.801–35(d)(1) now appears as § 165.803(m)(2)(iv)(A).

Regulatory Evaluation

This amendment has been reviewed under the provision of Executive Order 12291 and under DOT Order 2100.5, dated May 5, 1980, and has been determined to be non-major and non-significant. This document editorially updates Coast Guard regulations to reflect changes in the bridge-to-bridge communication frequency previously promulgated by the FCC. An economic evaluation has not been conducted since the impact of this amendment is expected to be minimal. The change in bridge-to-bridge communication frequency for the lower Mississippi River was promulgated on August 20, 1979; since that time all parties concerned have accommodated themselves to the change. Therefore, there will be no cost increase associated with this rulemaking.

In accordance with section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is further certified that this rule will not have a significant economic impact on a substantial number of small entities, since this change is editorial in nature with no anticipated economic impact.

List of Subjects in 33 CFR Part 165

Navigation (water), Waterways, Barges.

Final Regulation

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is changed by revising § 165.803(m)(2)(iv)(A) to read as follows:

§ 165.803 Mississippi River—regulated navigation area.

* * * * *

(m) * * *

(2) * * *

(iv) * * *

(A) A continuous guard on the frequency specified by current Federal Communications Commission regulations found in Part 83 of Title 47, Code of Federal Regulations; and

* * * * *

(33 U.S.C. 1225, 1231); 49 CFR 1.46(n)(4)

Dated: July 26, 1982.

B. F. Hollingsworth,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 82–22265 Filed 8–13–82; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–4–FRL 2149–1]

Florida: Revised Coal/Oil Mixture Test Burn for Florida Power and Light Co.'s Sanford Plant

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves a revision submitted by the State of Florida Department of Environmental Regulation (DER) in the schedule for test burning a coal/oil mixture (COM) at the Sanford plant of the Florida Power and Light Co. (FP&L). This revision only changes the date when the 30-month testing period begins.

EFFECTIVE DATE: This action will be effective on October 15, 1982 unless notice is received by September 15, 1982 that someone wishes to submit adverse or critical comments.

ADDRESSES: Written comments should be addressed to William Voshell of EPA Region IV's Air Management Branch (see EPA Region IV address below). Copies of the materials submitted by Florida DER may be examined during normal business hours at the following locations:

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

Library, Office of the Federal Register, 1100 L Street N.W., Rm. 8401, Washington, D.C. 20005

Environmental Protection Agency, Region IV, Air Management Branch, 345 Courtland Street N.E., Atlanta, Georgia 30365

Bureau of Air Quality Mgmt., Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301

FOR FURTHER INFORMATION CONTACT: William Voshell of EPA Region IV's Air Management Branch, 345 Courtland Street N.E., Atlanta Georgia 30365, telephone 404/881–3286 (FTS 257–3286).

SUPPLEMENTARY INFORMATION: The purpose of this rule is to delay the effective date of an amendment to § 17–2.600(5)(b)1. and 2., Florida Administrative Code (FAC), adopted by the Florida Environmental Regulation Commission (ERC) on June 10, 1981. That amendment allowed the burning of COM by Unit 4 of FP&L's Sanford plant during the period prior to July 1, 1984, or for 30 months after approval of the rule by EPA, whichever last occurred; it also established alternative emission limits for the Sanford plant which would, in effect, require installation of particulate control technology within 30 months of approval of the rule by the Environmental Protection Agency (EPA). The revised rule was approved by EPA on October 28, 1981 (46 FR 53140).

For economic reasons, FP&L now wants to delay burning of this mixture. Florida has revised § 17–2.600(5)(b)1. and 2., FAC, to make the 30-month period start when the Company recommences burning COM mixture or on July 1, 1983. Using the July 1, 1983, date as the latest starting date for the 30-month period, the latest final complying date for FP&L's Sanford 4 would be January 1, 1986. Otherwise, the intended 30-month COM burn period initially promulgated in the October 28, 1981, Federal Register could turn out in practice to be as little as 14 months because of delays by the Company.

The revision would still provide that the alternative emission limits for particulate matter and opacity specified in § 17–2.600(5)(b) for the Sanford Plant would take effect upon beginning of coal/oil mixture firing and expire 30 months after that date but no later than January 1, 1986, whichever first occurs.

For a more thorough discussion of events leading to the burning of the COM at the FP&L facility, the reader should refer to the summary and supplementary information provided in the issues of September 10, 1980 (45 FR 59577), and October 28, 1981 (46 FR 53140).

Action: Based on the foregoing, EPA hereby approves Florida DER's revised commencement date for Florida Power and Light Co.'s COM test burn at its Sanford Unit No. 4 located in Volusia County.

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 15, 1982. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

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

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

Incorporation by reference of the State Implementation Plan for the State of Florida was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

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

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

Dated: August 6, 1982.

Anne M. Gorsuch,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

In § 52.520, paragraph (c) is amended by adding subparagraph (45) as follows:

§ 52.520 Identification of plan.

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * *

(45) Revision of the commencement date of the COM test burn period for Florida Power and Light Co.'s Sanford Plant, Unit 4, submitted on March 30, 1982, by the Florida Department of Environmental Regulation.

[FR Doc. 82-22060 Filed 8-13-82; 8:45 am]

BILLING CODE 6560-50-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

41 CFR Ch. 7

[AIDPR Notice 83-1]

Revisions to Contract Payment Procedures

AGENCY: Agency for International Development.

ACTION: Final rule.

SUMMARY: This AIDPR Notice revises AID's procedures for payments under cost-reimbursement contracts, in response to recommendations from the AID Inspector General AID's cost-reimbursement contract payment clauses are revised to use the appropriate Federal Procurement Regulation (FPR) payment clauses, modified to establish a normal vouchering period of one month, instead of bi-weekly; to allow the contracting officer's authorized representative to approve voucher amounts; and to cross-reference the AID contract clause establishing documentation for payment requirements, as authorized in the FPR. These modifications are necessary in order for AID to meet its operational requirements, and will conform AID's payment procedures as closely as possible to the FPR. In addition, a new contract clause entitled "Documentation for Payment" is established for AID cost-reimbursement contracts. This clause consolidates and simplifies AID's established documentation requirements.

EFFECTIVE DATE: August 2, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. J. M. Kelly, M/SER/CM/SD/POL, Agency for International Development, Washington, D.C. 20523. Telephone (703) 235-9107.

SUPPLEMENTARY INFORMATION: This AIDPR Notice is a procurement regulation, and has been exempted from the requirements of Executive Order 12291 of February 17, 1981, pursuant to section 8(b) of the order, by the Director, OMB, in a letter dated April 8, 1981, as amended December 2, 1981. The determination required by paragraph 4a of OFPP Policy Letter 80-5, and the certification required by the Regulatory Flexibility Act have been made and are included in the body of this AIDPR Notice.

List of Subjects in 41 CFR Part 7-7

Government procurement.

PART 7-7—CONTRACT CLAUSES

Subpart 7-7.50—Clauses for Cost-Reimbursement Contracts

1. § 7-7.5001-9 is revised as follows:

§ 7-7.5001-9 Allowable cost, fee, and payment.

Allowable Cost, Fee, and Payment

(July 1982)

(a) For the performance of this contract, the Government shall pay to the Contractor:

(1) The cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with:

(i) Subpart 1-15.2 of the Federal Procurement Regulations (41 CFR 1-15.2), as in effect on the date of this contract; and

(ii) The terms of this contract; and

(2) Such fixed-fee, if any, as may be provided for in the Schedule.

(b) Payments shall be made to the Contractor when requested as work progresses, but not more frequently than once each month, in amounts approved by the Contracting Officer or his/her authorized representative, as designated in the clause of this contract entitled "Documentation for Payment". The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require (see the clause of this contract entitled "Documentation for Payment"), an invoice or public voucher supported by a statement of cost for the performance of this contract and claimed to constitute allowable cost. For this purpose, except as provided herein with respect to pension contributions, the term "costs" shall include only those recorded costs which result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract, together with (when the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business) costs incurred, but not necessarily paid, for materials which have been issued from the Contractor's stores inventory and placed in the production process for use on the contract, for direct labor, for direct travel, for other direct inhouse costs, and for properly allocable indirect costs, as is shown by records

maintained by the Contractor for purposes of obtaining reimbursement under Government contracts plus the amount of progress payments which have been paid to the Contractor's subcontractors under similar cost standards. In addition, when pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued costs therefore shall be excluded from indirect costs for payment purposes until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accruals therefore may be included in indirect costs for payment purposes provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from indirect cost for payment purposes until payment has been made. The restriction on payment more frequently than once each month and the requirement of prior payment for items or services purchased directly for the contract shall not apply when the Contractor is a small business concern.

(c) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract subject to the provisions of (d), below, make payment thereon as approved by the Contracting Officer or his/her authorized representative. Payment of the fixed-fee, if any, shall be made to the Contractor as specified in the Schedule: *Provided, however,* That after payment of 85 percent of the fixed-fee set forth in the Schedule, the Contracting Officer or his/her authorized representative may withhold further payment of fee until a reserve shall have been set aside in an amount which he considers necessary to protect the interests of the Government, but such reserve shall not exceed 15 percent of the total fixed-fee, or $100,000, whichever is less.

(d) At any time or times prior to final payment under this contract the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(e) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the provisions relating to patents and the provisions of (f), below), the Government shall promptly pay to the Contractor any balance of allowable cost, and any part of the fixed-fee, which has been withheld pursuant to paragraph (c) of this section, or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than 1 year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(1) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract; and

(2) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(i) Special claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor:

(ii) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract: *Provided, however,* That such claims are not known to the Contractor on the date of the execution of the release; and provided further, that the Contractor gives notice of such claims in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at this expense or without cost to the Government.

2. A new § 7–7.5001–47 is added as follows:

§ 7–7.5001–47 Documentation for payment.

Documentation for Payment

(July 1982)

(a) Claims for reinbursement under this Contract shall be submitted to the Paying Office indicated on the Cover Page of this Contract. The authorized Certifying Officer of the Paying Office is the designated representative of the Contracting Officer, authorized to approve vouchers under this Contract. The Contractor shall submit a Voucher Form SF–1034 (original) and SF–1034(a) in three copies. Each voucher shall be identified by the appropriate AID contract number, properly executed, in the amount of dollar expenditures made during the period covered. The voucher forms shall be supported by:

(1) Original and three copies of a certified fiscal report rendered by the Contractor in a form and manner satisfactory to AID substantially as follows:

TOTAL EXPENDITURES

Category	Budget amount	To date	This period (indicate dates)
Salaries and wages:			
Home office	$XXX	$XXX	$XXX
Field office	XXX	XXX	XXX
Indirect costs:			
Home office	XXX	XXX	XXX
Field office	XXX	XXX	XXX
Consultant fees	XXX	XXX	XXX
Allowances	XXX	XXX	XXX
Travel and transportation	XXX	XXX	XXX
Expendable equipment and materials	XXX	XXX	XXX
Non-expendable property	XXX	XXX	XXX
Participant costs	XXX	XXX	XXX
Other direct costs	XXX	XXX	XXX
Grand total	XXX	XXX	XXX

(2) The fiscal report shall include a certification, signed by an authorized representative of the Contractor, as follows:

The undersigned hereby certifies that (i) the fiscal report and any attachments have been prepared from the books and records of the Contractor in accordance with the terms of this Contract, and to the best of my knowledge and belief, that they are correct, that the sum claimed under this Contract is proper and due, that all the costs of contract performance (except as herewith reported in writing) have been paid or will be paid currently by the Contractor when due in the ordinary course of business, that the work reflected by the costs above has been performed, that the quantities and amounts involved are consistent with the requirements of this Contract, that all required Contracting Officer approvals have been obtained, and (ii) appropriate refund to AID will be made promptly upon request in the event of disallowance of costs not reimbursable under the terms of this Contract.

By: _____

Title: _____

Date: _____

(3) Unless otherwise provided in this Contract, the Contractor shall submit a vendor's invoice detailing the quantity

description, and price for each individual item purchased, as follows:

(i) Expendable equipment, supplies, or commodities—for transactions totaling more than $2,500.

(ii) Non-expendable property—for every purchase. Non-expendable property is property which is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and which has a unit cost of more than $500. This definition applies only to personal property purchased by the Contractor or delivered directly to the Contractor from the vendor. Personal property issued to the Contractor in the host country by the USAID Mission accountable officer and listed as non-expendable is reportable to the USAID Mission accountable officer regardless of its value.

(iii) The bill of lading or airway bill as evidence of shipment by U.S.-flag carrier.

(b) *Local currency payment.* The Contractor is fully responsible for the proper expenditure and control of local currency, if any, provided under this Contract. Local currency will be provided to the Contractor in accordance with written instructions provided by the Mission Director. The written instructions will also include accounting, vouchering, and reporting procedures. A copy of the instructions shall be provided to the Contractor's Chief of Party and to the Contracting Officer. The costs of bonding personnel responsible for local currency are reimbursable under this Contract.

(c) Upon compliance by the Contractor with all the provisions of this Contarct, acceptance by the Government of the work and final report, and a satisfactory accounting by the Contractor of all Government-owned property for which the Contractor had custodial responsibility, the Government shall promptly pay to the Contractor any moneys (dollars or local currency) due under the completion voucher. The Government will make suitable reduction for any disallowance or indebtedness by the Contractor by applying the proceeds of the voucher first to such deductions and next to any unliquidated balance of advance remaining under this Contract.

(d) The Contractor agrees that all approvals of the Mission Director and the Contracting Officer which are required by the provisions of this Contract shall be preserved and made available as part of the Contractor's records which are required to be preserved and made available by the clauses of this Contract entitled "Examination of Records by the Comptroller General" and "Audit".

Subpart 7–7.55—Clauses for Cost Reimbursement Contacts With Educational Institutions

3. § 7–7.5501–8 is revised as follows:

§ 7–7.5501–8 Allowable cost and payment.

Allowable Cost and Payment

(July 1982)

(a) For the performance of this contract, the Government shall pay to the Contractor the cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with:

(1) Subpart 1–15.3 of the Federal Procurement Regulations (41 CFR 1–15.3) as in effect on the date of this contract; and

(2) The terms of this contract.

(b) Payments shall be made to the Contractor when requested as work progresses, but not more frequently than once each month, in amounts approved by the Contracting Officer or his/her authorized representative as designated in the clause of this contract entitled "Documentation for Payment". The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as such representative may require (see the clause of this contract entitled "Documentation for Payment"), an invoice or public voucher supported by a statement of cost for the performance of this contract and claimed to constitute allowable cost. For this purpose, except as provided herein with respect to pension contributions, the term "costs" shall include only those recorded costs which result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract, together with (when the Contractor is not deliquent in payment of costs of contract performance in the ordinary course of business) costs incurred, but not necessarily paid, for materials which have been issued from the Contractor's stores inventory and placed in the production process for use on the contract, for direct labor, for direct travel, for other direct inhouse costs, and for properly allocable and allowable indirect costs, as is shown by records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts plus the amount of progress payments which have been paid to the Contractor's subcontractors under similar cost standards. In addition, when pension contributions are paid by the Contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from indirect costs for payment purposes until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accruals therefor may be included in indirect costs for payment purposes provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from indirect cost for payment purposes until payment has been made. The restriction on payment more frequently than once each month and the requirement of prior payment for items or services purchased directly for the contract shall not apply when the Contractor is small business concern.

(c) Promptly after receipt of each invoice or voucher and statement of cost, the Government shall, except as otherwise provided in this contract subject to the provisions of paragraph (d) of this section, make payment thereon as approved by the Contracting Officer or his/her authorized representative. After payment of an amount equal to 80 percent of (the Government's share of) the total estimated cost of performance of this contract set forth in the Schedule, the Contracting Officer or his/her authorized representative may withhold further payment on account of allowable cost until a reserve shall have been set aside in an amount which he considers necessary to protect the interests of the Government, but such reserve shall not exceed 1 percent of (the Government's share of) such total estimated cost or $10,000, whichever is less.

(d) At any time or times prior to final payment under this contract the Contracting Officer may have the invoices or vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related invoice or voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding invoices or vouchers.

(e) On receipt and approval of the invoice or voucher designated by the Contractor as the "completion invoice" or "completion voucher" and upon compliance by the Contractor with all the provisions of this contract (including, without limitation, the provisions relating to patents and the provisions of paragraph (f) of this section), the Government shall promptly pay to the Contractor any balance of allowable cost which has been withheld pursuant to paragraph (c) of this section, or otherwise not paid to the Contractor. The completion invoice or voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than 1 year (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(f) The Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this Contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver:

(1) An assignment to the Government, in form and substance satisfactory to the Contracting Officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly allocable to costs for which the Contractor has been reimbursed by the Government under the contract; and

(2) A release discharging the Government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions:

(i) Special claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statement by the Contractor;

(ii) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the Contractor to third parties arising out of the performance of this contract: *Provided, however,* That such claims are not known to the Contractor on the date of the execution of the release; and provided further, that the Contractor gives notice of such claims in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the Government is prepared to make final payment, whichever is earlier; and

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the Contractor under the provisions of this contract relating to patents.

(g) Any cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at his expense or without cost to the Government.

4. § 7–7.5501–4, [Reserved], is revised as follows:

§ 7–7.5501–4 Documentation for payment.

Insert the clause set forth in AIDPR 7–7.5001–47.

Determination

As required by paragraph 4a of OFPP Policy Letter 80–5, I hereby determine that this AIDPR Notice has been reviewed against the policies set forth in paragraphs (1) through (8) of Section 2 of the Office of Federal Procurement Policy Act (Pub. L. 93–400, as amended by Pub. L. 96–83, hereinafter referred to as the Act), and policy directives issued by OFPP under Section 6(h) of the Act. Based on this review, I hereby determine that this AIDPR Notice is not inconsistent with the policies set forth in paragraphs (1) through (8) of Section 2 of the Act, and policy directives issued by OFPP under Section 6(h) of the Act.

Certification

Pursuant to the Regulatory Flexibility Act, I hereby certify as head of the Agency, under AIDPR 7–1.204, that this regulation will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions.

(41 CFR 7–1.104–4)

Dated: August 2, 1982.

John F. Owens,

Deputy Assistant to the Administrator for Management.

[FR Doc. 82–22256 Filed 8–13–82; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6312

[R–2572]

California; Revocation of Public Land Order No. 4984

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order which withdrew 585.21 acres of minerals reserved to the United States in patented lands. The lands are part of a larger parcel of land bequeathed to the State of California. This action will provide for the sale of the reserved mineral estate to the State of California.

EFFECTIVE DATE: August 16, 1982.

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

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

1. Public Land Order No. 4984 of December 24, 1970, which withdrew the minerals reserved to the United States in the following described patented lands from prospecting, location, entry and purchase under the United States mining laws (30 U.S.C. Ch. 2) is hereby revoked in its entirety:

San Bernardino Meridian

T. 18 S., R. 2 E.,
Sec. 24, SW¼SE¼;
Sec. 25, lots 3 to 9 incl., lots 11, 12 and 13;
Sec. 26, E½NE¼.
T. 18 S., R. 3 E.,
Sec. 29, lot 7;
Sec. 30, lot 2.

The area described aggregates 585.21 acres in San Diego County.

2. The surface estate of the lands has been conveyed from the United States to the State of California and is not subject to disposition under the public land laws.

3. The reserved mineral estate shall immediately become available for consummation of a pending sale to the State of California under Section 209 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2757, 43 U.S.C. 1719.

Dated: August 4, 1982.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 82–22253 Filed 8–13–82; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 67 and 68

[CGD 80–107]

Documentation of Vessels; Correction

AGENCY: Coast Guard, DOT.

ACTION: Final rule, correction.

SUMMARY: Federal documentation of vessels, a form of national licensing, is required for the operation of certain

vessels in certain trades, serves as evidence of vessel nationality, and, with certain exceptions, permits vessels to be subject to preferred mortgages. The Coast Guard published regulations governing the documentation of vessels on June 24, 1982 (47 FR 27490). The regulations, as published, contain typographical errors. This document will correct those errors.

FOR FURTHER INFORMATION CONTACT: Mrs. Phyllis D. Carnilla, Office of Merchant Marine Safety, United States Coast Guard, Room 1312, 2100 Second Street SW., Washington, D.C. 20593, (202) 426–1492.

List of Subjects in 46 CFR Parts 67 and 68

Vessels, Documentation.

In consideration of the foregoing, the specified sections of Title 46 of the Code of Federal Regulations are corrected to read as follows:

PART 67—DOCUMENTATION OF VESSELS

§ 67.03–1 Requirement for citizen owner.

Certificates of Documentation are available only to vessels which are wholly owned by United States citizens. For the purposes of obtaining a Certificate of Documentation, the persons and entities discussed in §§ 67.03–3 through 67.03–09 are citizens.

§ 67.13–1 Official number designation.

The owner of a vessel must apply to the Commandant, via a documentation officer, using form CG–1258, for designation of an official number for the vessel:

(a) Upon application for initial documentation of the vessel; and

(b) When an existing vessel has been severed, with two (2) or more vessels resulting. In this case, the official number of the original vessel is retired and the owner of each resulting vessel must apply for designation of a new official number.

§ 67.13–7 Hailing port designation.

* * * * *

(b) Except as provided in paragraph (c) of this section, the hailing port must be:

(1) The vessel's home port; or

(2) The place which the owner used to determine the home port of the vessel.

* * * * *

(f) The OCMI for the documentation office at which application for documentation is made has final authority to settle disputes as to the propriety of the hailing port designated.

* * * * *

§ 67.15–5 Requirement for evidence of marking.

* * * * *

(d) Whenever an official number is designated under the provisions of § 67.13–1(b).

§ 67.19–9 Wrecked vessels.

* * * * *

(b) * * *

(2) * * *

Note.—Calculation of appraised salved value will include consideration of the fact that the vessel, if in compliance with the Act, will attain coastwise and fishery privileges.

Subpart 67.23—Period of Validity of Certificate of Documentation; Mortgagee Consent.

* * * * *

§ 67.23–3 Requirement for surrender.

* * * * *

(e) Evidence of surrender is the original form CG–1270, properly noted by the documentation officer to whom application is made, to reflect the cause(s) of surrender.

§ 67.23–5 [Corrected].

On page 27502 in column one, the number of the section entitled Restrictions on surrender; mortgagee consent, is corrected to read § 67.23–5.

§ 67.23–9 Requirement for deletion.

* * * * *

(d) Certificates issued to vessels subject to deletion must be physically given up to a documentation officer.

* * * * *

§ 67.25–3 Surrender—Change of name.

(a) * * *

(2) If the vessel is the subject of a preferred mortgage outstanding of record, file an original form CG–4593 evidencing mortgagee consent;

* * * * *

§ 67.35–1 General requirements.

A notice of claim of lien presented for recordation must meet all the requirements of Subpart 67.29 and the requirements of this subpart.

§ 67.35–5 Required recitations.

* * * * *

(c) The date on which the lien arose; and

(d) The amount of the lien claimed.

§ 67.35–7 Restrictions on recordation.

A notice of claim of lien is not entitled to recordation unless the vessel against which the lien is claimed is the subject of a preferred mortgage outstanding of record.

§ 67.37–1 General requirements for preferred mortgages.

(a) * * *

(1) Meet all the requirements for recordation of a chattel mortgage contained in Subpart 67.29 and §§ 67.33–1, 67.33–3, and 67.33–5;

* * * * *

(3) Be accompanied by an affadavit from the mortgagor(s) to the effect that it is made in good faith and without any intent to hinder, delay, or defraud any existing or future creditor or any lienor of the vessel; and

* * * * *

§ 67.37–7 Required number of copies.

(a) Except as provided in paragraph (b) of this section, each filing of a preferred mortgage must consist of an original, a copy to be retained at the home port, a copy to be certified for the owner, and a copy to be certified for each vessel covered by the mortgage. The original mortgage, the mortgage copy retained by the home port, and the affidavit described in § 67.37–1(a)(3) must bear original signatures.

* * * * *

§ 67.41–3 Optional request for Abstract of Title.

Any person may request from the documentation officer at the documentation office at the home port of a vessel an Abstract of Title for that vessel. Abstracts of Title issued pursuant to this section shall not be used to effect a change of home port.

§ 67.43–5 Application for new vessel determination.

The fee for applying for a new vessel determination under § 67.27–1(c) is $200.00.

§ 67.45–13 Fraudulent application for Certificate.

(a) No owner of a vessel, nor person purporting to act on behalf of an owner, shall knowingly falsify or conceal a material fact in connection with the documentation of that vessel.

* * * * *

PART 68—DOCUMENTATION OF VESSELS PURSUANT TO EXTRAORDINARY LEGISLATIVE GRANTS

§ 68.01–3 Requirements for citizenship under 46 U.S.C. 883–1.

* * * * *

(f) The corporation must purchase or produce in the United States, its territories or possessions, not less than 75 percent of the raw materials used or sold in its operations.

Dated: August 9, 1982.

* * * * *

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 82-22289 Filed 8-16-82; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

Modification of a Footnote Regarding Government Usage in the Fixed and Mobile Services at a Certain GHz Frequency; Correction

AGENCY: Federal Communications Commission.

ACTION: Final Rule; correction.

SUMMARY: This document corrects a final rule, FCC 82-358, concerning government usage in the fixed and mobile services at a certain GHz frequency, which was released by the FCC on August 3, 1982 and published in the Federal Register at 47 FR 34788, August 11, 1982. This action is necessary to correct an erroneous state listing for Bolling Air Force Base.

FOR FURTHER INFORMATION CONTACT: Larry Petak, Spectrum Planning Branch, Spectrum Management Division, Office of Science and Technology (202) 653-8162.

SUPPLEMENTARY INFORMATION:

Released: August 10, 1982.

In the matter of amendment of Part 2 of the Commission's rules to modify a footnote regarding Government usage in the fixed and mobile services at 14.4-14.5 GHz.

1. On August 3, 1982, the Commission released an Order in the aforementioned proceeding. The state listing for Bolling Air Force Base was given incorrectly.

2. Accordingly, the Federal Communications Commission is correcting footnote US234 to 47 CFR 2.106 to read as follows:

§ 2.106 Table of frequency allocations.

* * * * *

US234 In the band 14.4-14.5 GHz, all Government fixed and mobile stations, effective December 31, 1981, shall be on a secondary basis to stations in the non-Government fixed-satellite service. Exceptionally, the Government operations listed below, which were in existence on December 31, 1961, may continue to operate on a coequal primary basis with stations in the non-Government fixed-satellite service until December 31, 1986.

Operation	Points of communication
Point Mugu, CA	From 34°07' N 119°07' W to 34°00' N 119°38' W.
Fort Bragg, NC	From 35°08' N 79°05' to 35°10' N 79°01' W.
Vandenberg, CA	Transportable terminals within 25 km radius of 34°44' N 120°35' W.
Bolling AFB, DC	Transportable terminals within 25 km radius of 38°50' N 77°01' W.

* * * * *

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 82-22246 Filed 8-13-82; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 2729-145]

Ocean Salmon Fisheries off the Coasts of California, Oregon, and Washington

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

ACTION: Final rule.

SUMMARY: NOAA issues final regulations to implement the 1982 amendment and incorporate certain changes occasioned by the Secretarial Amendment to the fishery management plan (FMP) for the Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California. Specific management measures in the implementing regulations vary by fishery and area, but generally establish fishing seasons, quotas, necessary inseason management modifications, daily catch limits for recreational fisheries, and minimum size limits for salmon. The intended effect of the regulations is to prevent overfishing, to apportion equitably the ocean harvest between commercial and recreational fisheries, to allow more salmon to survive the ocean fisheries and reach the various inside fisheries, to meet the U.S. obligations to treaty Indian fisheries, and to achieve the 1982 salmon spawning escapement goals.

EFFECTIVE DATE: 0001 hours Pacific Daylight Time, August 12, 1982. Sections 661.20(b)(2)(i)(B) and 661.20(b)(3)(i)(B) remain effective only through August 29, 1982.

ADDRESS: Copies of the final regulatory flexibility analysis are available from the Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, Oregon 97201.

FOR FURTHER INFORMATION CONTACT: H. A. Larkins, (Director, Northwest Regional Office, National Marine Fisheries Service), 206-527-6150.

SUPPLEMENTARY INFORMATION: The fishery management plan (FMP) for the Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California, prepared by the Pacific Fishery Management Council (Council), was approved by the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), on March 2, 1978. Regulations to implement the FMP were first published on April 14, 1978 (43 FR 15629). The FMP was amended in 1979, 1980, 1981, and 1982 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.* The amended FMP specifies management measures that vary by fishery and area; in general, it establishes fishing seasons, provides seasonal harvest quotas and other inseason management measures, sets minimum fish sizes and establishes daily catch limits for the recreational fisheries. The Council's 1982 FMP amendment, as it applies to the commercial salmon fishery north of Cape Blanco, Oregon, and to the recreational fisheries coastwide, was approved by the Assistant Administrator on May 6, 1982, under section 304 of the Magnuson Act. NOAA implemented the approved portions of the 1982 FMP amendment by an emergency interim rule effective from May 14, 1982, through June 27, 1982 (47 FR 21256). NOAA extended this rule for a second 45-day period, from June 28 through August 11, 1982 (47 FR 28105).

The portion of the Council's recommended amendment for the commercial fisheries south of Cape Blanco was disapproved by the Assistant Administrator. NOAA published an emergency interim rule for those salmon fisheries on June 3, 1982 (47 FR 24134), effective June 1, 1982, and extended that rule for a second 45-day period, from July 16 through August 29 (47 FR 30994). Proposed rules and a notice of availability for the Secretarial Amendment were published July 2, 1982 (47 FR 28971).

The Council's 1982 amendment and implementing regulations were discussed thoroughly in the preamble to the emergency interim rule issued at 47 FR 21256. Public comments were invited for 45 days. Comments received have been considered and are discussed in the "Comments" section of this preamble.

The Assistant Administrator reviewed the 1982 amendment and implementing

regulations in light of comments submitted during the public comment period. He has determined that the amended FMP is consistent with the Magnuson Act and other applicable law and now adopts as final those regulations issued as an emergency interim rule at 47 FR 21256, without republishing them to save public expense and to reduce the volume of printed matter. Six changes, however, are incorporated into the final rules adopted herein. First, the title of 50 CFR Part 661 is revised to conform with the title of the original 1978 FMP. Second, the definition of the Fishery Management Area is being revised to clarify the designations of the "3-mile limit" and the "200-mile limit" as the inner and outer boundaries, respectively, of the fishery conservation zone off the coasts of Washington, Oregon, and California. Third, certain prohibitions contained in § 661.8 are transferred to § 661.7, "General Restrictions," to complete the reformatting of Part 661 as was stated in the preamble to the emergency interim rule and as was suggested by one commenter. Fourth, the final rules incorporate certain portions of the interim provisions of the emergency regulations pertaining to the commercial fisheries south of Cape Blanco, Oregon (*see* 47 FR 24134, June 3, 1982; 47 FR 30994, July 16, 1982), for the following reasons: (a) The regulations appearing at 47 FR 21256 (May 18, 1982) contained various provisions pertaining to the commercial fisheries south of Cape Blanco, Oregon; those provisions derived from regulations in place during 1980 (California) and 1981 (Oregon, south of Cape Blanco); (b) Those provisions were temporarily amended by emergency interim regulations (47 FR 24134, June 3, 1982; 47 FR 30994, July 16, 1982); (c) Certain of those provisions, namely §§ 661.20(b)(2) and 661.20(b)(3), pertain to the commercial fisheries both north and south of Cape Blanco and were promulgated without internal divisions (such as subparagraphs); (d) Final regulations must be promulgated for the commercial fisheries north of Cape Blanco and that can be done only by revising §§ 661.20(b)(2) and (b)(3) to set forth those provisions in a manner capable of severance (see item 2(e) in the text of the regulatory amendment). However, these final rules cannot incorporate those severable rules which have been temporarily amended (see item 2 (d) in the text of the regulatory amendment). That is, paragraphs (e)(2) and (f)(1) of the definition of *Subarea* in § 661.3, and §§ 661.20(a)(4), 661.20(a)(5) and 661.20(a)(6) have been temporarily amended by emergency interim rules appearing at 47 FR 24134 (June 3, 1982), as extended at 47 FR 30994 (July 16, 1982). Fifth, the final rules include a modification to § 661.22(b)(2), pertaining to inseason adjustment of coho quotas, to avoid referencing specific subparagraphs of §§ 661.20(a)(3) and (a)(4) (the substantive content of which differs between the rules published at 47 FR 21256 and those published at 47 FR 24134); instead, the denotation of those subparagraphs is specified. Sixth, a word omission is corrected in § 661.23(b)(2).

Secretarial preemption

Section 306(b) of the Magnuson Act (18 U.S.C. 1856(b)), authorizes the Secretary of Commerce (Secretary) to regulate a fishery within State boundaries if he makes the following two findings: first, fishing in the fishery is engaged in predominately within and beyond the fishery conservation zone (FCZ); and second, a State has taken action, the results of which will substantially and adversely affect the carrying out of the fishery management plan for the fishery.

On the basis of that statutorily-conferred authority, the Secretary promulgated an interim emergency rule (47 FR 24136, June 3, 1982) that closed the territorial sea off the coast of Oregon north of Cape Falcon to recreational fishing from May 29, 1982, through June 11, 1982. He did so for the following reasons.

During its deliberations on management measures for the 1982 season, the Council considered but rejected a proposal to open the FCZ area between Leadbetter Point, Washington, and Cape Blanco, Oregon, for recreational chinook-only fishing between May 29 and June 11. However, the Council decided against that course of action and instead adopted an opening date of June 12 for the recreational fishing season in the area between Leadbetter Point and Cape Blanco.

On May 21, 1982, the Oregon Fish and Wildlife Commission confirmed its earlier decision to open Oregon waters north of Cape Blanco for a two-week recreational fishery for chinook salmon only, between May 29 and June 11.

Because of that action, the Assistant Administrator, on May 22, served notice upon the State of Oregon of the initiation of proceedings to preempt Oregon's fishery management authority for recreational fishing in the territorial sea off the coast of Oregon north of Cape Falcon between May 29 and June 11. Only the area between Cape Falcon and the Oregon-Washington border was proposed for preemption because the impacts of fishing in that area on Oregon Production Index Area coho and Columbia River chinook were considered much greater than the impacts of fishing south of Cape Falcon.

During the week of May 24, proceedings were held according to regulations appearing at 50 CFR Part 619 (47 FR 12181, March 22, 1982). An administrative law judge, after considering submissions from the State of Oregon and the Assistant Administrator, recommended that the Secretary preempt Oregon's authority to the extent proposed. Thereafter, on May 28, the Secretary issued an order preempting that authority.

Comments

1. Two hundred and thirty sport fishermen from Newport, Oregon, signed a petition to the Secretary asking him to increase the recreational quota for coho salmon by transferring to that quota 40,000 fish that had been allocated to the commercial troll fishery.

2. Commercial fishermen from Oregon commented that the 1982 quota for coho salmon was too low and that, in general, the commercial fishing regulations were too restrictive.

3. The Oregon Department of Land Conservation and Development (DLCD) criticized the timeliness of the National Marine Fisheries Service's (NMFS) consistency statement on coastal zone management. The DLCD also cited the declining trend in the spawning escapements of Oregon coastal coho stocks and stated that the Council had not made enough progress toward reestablishing a sustainable yield for natural coho stocks.

4. The Washington Department of Fisheries asked the Secretary to preempt the State of Oregon's ocean salmon fishing regulations for State waters to prevent wastage of coho and sublegal chinook and maintain equity in the opportunity for harvest. The Quinault Indian Tribe also expressed concern over Oregon's regulations.

5. A commercial fisherman from the State of Washington commented that there had been no prior notice of a minimum size for salmon plugs, and that there was no basis for continued imposition of a 28" size limit for chinook in subareas A and B (off the coasts of Washington and Oregon north of Cape Falcon).

Responses

1. The Council adopted, and the Secretary approved, commercial and recreational coho salmon fishing quotas

that were reduced from the 1981 coho salmon quotas. Both the Council and the Secretary believe it was necessary to reduce the coho salmon quotas to assure sufficient escapement from the ocean fisheries and meet the spawning escapement goals. A plan amendment would be required to transfer fish from the commercial fishery quota to the recreational fishery quota. Because of the time required for the Council to develop and adopt and the Secretary to approve and implement such a plan amendment, it would be impossible to accomplish this change before the fishing season closed.

2. The Council adopted, and the Secretary approved, 1982 ocean commercial and recreational fishing regulations for the area north of Cape Blanco, Oregon, that were more restrictive than the 1981 regulations. The more restrictive regulations, particularly the reduced coho salmon quotas, were necessary in order to protect diminished coastal coho stocks and to meet spawning escapement goals.

3. When the Secretary of Commerce approved the Council's salmon plan amendments and issued emergency regulations to implement the amendments, NMFS provided coastal zone management consistency statements to the State coastal zone management agencies. Such notification was appropriate and timely. As for protecting and enhancing coho stocks, the Council has done more than the State of Oregon. During the last two salmon fishing seasons, the State of Oregon adopted salmon fishing regulations that were less restrictive, and thus offered less protection of the salmon resource, than the regulations adopted by the Council and implemented by the Secretary. This year, it was necessary for the Secretary to preempt part of Oregon's State salmon fishing regulations to provide adequate protection for immature Columbia River chinook and diminished coho stocks. The Council and the Secretary will continue to work toward protection of diminished salmon stocks wherever they occur; but the Council must have the cooperation of the States in setting compatible fishing regulations if the salmon are to be protected adequately.

4. The Secretary did preempt the State of Oregon's regulations for recreational salmon fishing in the territorial sea off the coast of Oregon north of Cape Falcon, from May 29 through June 11, 1982 (refer to the section on "Secretarial preemption").

5. The Council adopted, and the Secretary approved, the 5" minimum length for salmon plugs used in the commercial troll fishery to minimize the number of coho salmon and sublegal chinook salmon that would be hooked and released during the chinook-only fishing seasons. The 28" minimum length for chinook salmon retained by the commercial fishery north of Cape Falcon has been in effect since 1979; it was established to minimize the number of immature 3-year-old chinook caught in the commercial fishery while allowing a reasonable harvest of maturing 3-year-old and older chinook. This size limit virtually eliminates the retention of immature 3-year-old spring and summer chinook and provides added escapement for Columbia River stocks. This minimum size is also required of commercial salmon trollers in Alaska.

Classification

The Assistant Administrator determined that the approved portions of the 1982 amendment are consistent with the Magnuson Act, including the national standards, and other applicable law.

The NOAA Administrator has determined that the rules implementing the 1982 amendment are not "major" rules under Executive Order (E.O.) 12291 requiring a regulatory impact analysis. A regulatory impact review/initial regulatory flexibility analysis (RIR/IRFA) was prepared. That document was discussed in the preamble to the emergency interim rule and was made available to the public. This review focuses on the issues and problems in the salmon fisheries and contains an analysis of the impacts of the adopted management measures and alternative management options. Some issues could be analyzed only partially because of data limitations. The RIR/IRFA supports the determination that these rules are not "major" under the E.O. 12291 criteria.

The NOAA Administrator also determined that the rules implementing the 1982 amendment have a significant economic impact on a substantial number of small entities, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601–12. The RIR/IRFA was summarized in the preamble to the emergency interim rule; the RIR/IRFA also was made available to the public. Now, a final regulatory flexibility analysis has been prepared and is available at the address noted above.

The final supplement to the environmental impact statement (FSEIS) for this action, which supplements the original environmental impact statement and previous FSEISs prepared for the FMP, is on file with the Environmental Protection Agency. A notice of availability of the FSEIS was published on April 30, 1982 (47 FR 18652).

The Assistant Administrator has determined that there is a critical need to have regulations in place at the end of the 90-day period for the emergency interim rules that implement the approved portions of the 1982 amendment. Moreover, the public has been afforded more than 45 days to comment upon and prepare for final implementation of these rules. For these reasons, then, the Assistant Administrator finds for good cause that it is unnecessary, impracticable, and contrary to the public interest to delay for 30 days the effective date of these final regulations, under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*

List of Subjects in 50 CFR Part 661

Fish, Fisheries, Fishing, Indians.

Dated: August 11, 1982.

William G. Gordon,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

1. The authority citation for part 661 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Accordingly, the interim final rule revising Part 661 which was published at 47 FR 21256 (May 18, 1982) is adopted as a final rule, except for paragraphs (e)(2) and (f)(1) of the definition in § 661.3, and §§ 661.20(a) (4), (5), and (6), which were temporarily amended by emergency interim rules appearing at 47 FR 24134 (June 3, 1982), as extended at 47 FR 30994 (July 16, 1982). Part 661 is further amended as follows:

a. The title of Part 661 is revised to read as set forth above.

b. The definition of *Fishery Management Area* in § 661.3 is revised to read as follows:

§ 661.3 Definitions.

* * * * *

Fishery Management Area means the fishery conservation zone (FCZ) off the coasts of Washington, Oregon, and California between 3 and 200 miles offshore, and bounded on the north by the Provisional International Boundary between the U.S. and Canada, and bounded on the south by the International Boundary between the U.S. and Mexico. The inner boundary of the FCZ is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the

"3-mile limit"). The outer boundary of the FCZ is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the United States and Canada or Mexico.

* * * * *

§§ 661.7 and 661.8 [Amended]

c. Sections 661.7 and 661.8 are amended by redesignating § 661.8(a) in its entirety as § 661.7(h), and by redesignating §§ 661.8(b), 661.8(c) and 661.8(d) as §§ 661.8(a), 661.8(b) and 661.8(c), respectively.

d. Paragraphs (b)(2) and (b)(3) of § 661.20 are revised to read as follows:

§ 661.20 Commercial fishing.

* * * * *

(b) * * *

(2)(i) No person shall engage in commercial salmon fishing in the Fishery Management Area using other than single barbless hooks as defined in § 661.3; or bait hooks with whole natural bait attached as the primary bait; or hooks on artificial salmon plugs not less than five (5) inches long in the following areas during the periods specified below.

(A) *Subarea and Season:*

Subarea and Season

A—May 1–31

B—May 1–31

C—May 1–31 and after September 5 during the season specified in § 661.20(a)(3)(iv)

(B) *Subarea and Season:*

Subarea and Season

D—May 1–31 and after September 5 during the season specified in § 661.20(a)(4)(iv)

E—May 1–24 (subsequent to the 1982 season)

F—April 22–May 24 (subsequent to the 1982 season)

(ii) Gear commonly know as "spoons," "wobblers," "dodgers," and flexible plastic lures are not considered artificial salmon plugs, and must be equipped with barbless hooks during the seasons described above.

(3)(i) No person shall engage in commercial salmon fishing using other than hooks with whole natural bait or salmon plugs not less than five (5) inches long during the periods specified below.

(A) *Subarea C:*

June 1–15, and from the date the commercial coho quota is reached in subareas C and D to September 5.

(B) *Subarea D:*

June 1–8, and from the date the commerical coho quota is reached in subareas C and D to Setpember 5.

(ii) Gear commonly known as "spoons," "wobblers," "dodgers," and flexible plastic lures, are not considered salmon plugs, and are prohibited during the times specified in this § 661.20(b)(3).

* * * * *

e. Paragraph (b)(2) of § 661.22 is revised to read as follows:

§ 661.22 Inseason adjustments.

* * * * *

(b) * * *

(1) * * *

(2) On or before the time that 75% of the commercial coho quota specified in § 661.22(a)(1) for subareas C and D is reached, the Regional Director will estimate the number of coho salmon that will be hooked and released during any open season for all salmon species except coho, specified in §§ 661.20(a)(3) and (a)(4), which occurs after the coho quota is reached, and the Secretary will reduce the commercial coho quota for subareas C and D accordingly by publishing a field order in the Federal Register.

* * * * *

§ 661.23 [Amended]

f. In paragraph (b)(2) of § 661.23, the phrase "and north 46°53'03" N. latitude (Point Chehalis)," is corrected to read "and north of 46°53'03" N. Latitude (Point Chehalis),".

[FR Doc. 82-22219 Filed 8-11-82; 1:33 pm]

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Proposed Rules

Federal Register
Vol. 47, No. 158
Monday, August 16, 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

Commodity Credit Corporation

7 CFR Part 1421

CCC Grain Price Support Regulations Governing the Grain Reserve Program for 1982 and Subsequent Crops and Alternative Program for 1981 and Prior Crops

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim Rule.

SUMMARY: The purpose of this interim rule is to set forth the regulations which govern the farmer-owned Grain Reserve Program for 1982 and subsequent crops and alternative program for 1981 and prior crops. The rule implements the new reserve program for 1982 and subsequent crops of wheat and feed grains and establishes the term and conditions whereby producers can enter into extended grain reserve loans with the Commodity Credit Corporation. This program is authorized by Section 110 of the Agricultural Act of 1949, as amended (7 U.S.C. 1445e).

DATES: This interim rule become effective August 13, 1982. Comments must be received on or before October 15, 1982 to be assured of consideration.

ADDRESSES: Interested persons may send comments to Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Steve P. Gill, Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Phone: (202) 382–9888. The Final Regulatory Impact Analyses copies for the 1982-Crop Wheat and Feed Grain Programs, which cover the grain reserve program, are available from Steve P. Gill.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures established in accordance with provisions of Secretary's Memorandum 1512–1 and Executive Order 12291 and has been classified "major" since the rule will result in an annual effect on the economy of $100 million or more. However, this interim rule will not result in (1) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (2) 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 markets or export markets.

Need for Immediate Action

The near record 1981-crop of wheat and feed grains exceeded demand and resulted in a depressed price situation. Producers will be harvesting 1982-crop wheat and feed grains soon. In an attempt to strengthen prices and reduce supplies for the 1982–83 marketing year, the Secretary has announced an Acreage Reduction Program for 1982-crop wheat and feed grains and has announced that the immediate entry of 1982-crop wheat and feed grains into the Grain Reserve Program will be permitted. The Secretary also announced the reserve storage payment rates and trigger release levels applicable to the 1982 crops of wheat and feed grains.

Accordingly, due to the need for prompt action, it has been determined that it is impractical and contrary to the public interest for CCC to comply with any further rulemaking requirements with respect to this rule. Therefore, this interim rule shall become effective upon the date of filing with the Director, Office of the Federal Register. However, comments with respect to this regulation are requested and should be submitted on or before October 15, 1982 in order to be assured of consideration. This interim rule will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the **Federal Register** as soon as possible.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this interim rule.

This action is not expected to have any significant impact on the quality of human environment, health and safety.

The title and number of the Federal Assistance Program to which this interim rule applies to are: Grain Reserve Program, Number 10.067 as filed in the Catalog of Federal Domestic Assistance. This action will not have a significant impact specifically on area and community development. Therefore, review as established by OMB Circular A–95 was not used to assure that units of local government are informed of this action.

Summary of Statutory Authority

Section 110 of the Agricultural Act of 1949 was amended by section 1001 of the Agriculture and Food Act of 1981 to require that the Secretary of Agriculture formulate and administer a producer storage program for wheat and feed grains in order to stabilize prices and to provide for the orderly marketing of the commodities. In carrying out the producer storate program, the Secretary is authorized to provide original or extended loans (extensions of regular price support loans) to wheat and feed grain producers. Among other terms and conditions, the producer storage program may provide for the following: (1) Repayment of extended price support loans by producers in not less than three nor more than five years, (2) payment to producers for storage, and (3) a rate of interest based on the rate charged CCC by the U.S. Treasury, except that the Secretary may waive or adjust such interest.

Also, the Secretary is authorized to: (1) Establish appropriate price levels at which producers may redeem, without penalty, their commodity from the grain reserve and repay their extended price support loans, plus interest (i.e., trigger release level), (2) require producers to repay their grain reserve loans under the program prior to their maturity date if he determines that emergency conditions exist which require that the commodity which is securing as collateral for such loan be made available in the market to meet urgent domestic or international needs, and (3) determine and announce the maximum quantity of wheat and feed grains which will be stored under

the program. In no event, however, shall the established maximum quantity be less than 700,000,000 bushels for wheat and 1,000,000,000 bushels for feed grains.

Summary of Interim Rule

In addition to implementing the provisions of the program which are specified above, the following is a discussion of other terms and conditions which are applicable to the Grain Reserve Program for the 1982 and subsequent crops of wheat, barley, corn, oats, and sorghum, as well as crops of such commodities for prior crop years if entry into the program for such commodity is authorized by the Secretary.

The interim rule provides that in order to encourage the orderly marketing of wheat or feed grains, the Secretary may authorize producers to participate in a Grain Reserve Program for a specified crop of wheat or feed grains prior to maturity of their regular price support loans on such crop.

Section 1421.743 of this rule permits producers to participate in the Grain Reserve Program whenever the reserve program for a specified commodity is available. Producers will be permitted to place an eligible commodity into the reserve only when the national average market price for such commodity is below the trigger release level for the commodity. Entry of an eligible commodity into the reserve will not be permitted when the national average market price for that commodity has reached or exceeds the trigger release level for the commodity.

Section 1421.751(a) of this rule provides that each grain reserve loan shall bear interest during the first year at the rate applicable to the Note and Security Agreement signed by the producer and at such subsequent interest rates as may be determined and announced by the Secretary. Normally, grain reserve loans will not bear interest after the first year (see § 1421.751(b)). However, notwithstanding any period during which interest on grain reserve loans would otherwise be waived, interest will be charged between the day following the second consecutive CCC announcement that the national average market price for a commodity is equal to or exceeds the trigger release level and the date of any subsequent announcement by CCC that the national average market price for such commodity is again below the trigger release level. Such interest will accrue at the rate applicable to CCC price support loans when interest resumes.

Section 1421.753(a) of this interim rule provides that the trigger release level for wheat shall be $4.65 per bushel; barley, $2.65 per bushel; corn, $3.25 per bushel; oats, $1.65 per bushel; and sorghum, $5.54 per hundredweight. If grain serving as collateral for a grain reserve laon is redeemed by a producer prior to an announcement by CCC that the trigger release level for the commodity has been reached (unless emergency release has been authorized), the producer is required by Section 1421.53(a) of this interim rule to repay the loan principal and interest. Such producer is further required to repay to CCC with interest all previously received storage payments for the period during which liquidated damages are assessed as set forth below. In addition, the producer is required to pay to CCC liquidated damages at a rate equal to 50 percent of the interest rate applicable to CCC price support loans at the time of redemption. Liquidated damages will be assessed for the period beginning on the later of: (i) The date following the last date the producer had an opportunity to repay the loan during a period when the reserve was in release; or (ii) the date the reserve agreement was approved (in the case of converted reserve agreements, the date the original reserve agreement was approved). The period during which such liquidated damages will be assessed will end on the date of repayment. If a producer voluntarily forfeits the commodity prior to the time CCC announces that the trigger release level for such commodity has been reached, such producer shall be required to repay to CCC all storage payments received by the producer with respect to such commodity for the period beginning on the date when liquidated damages begin to accrue, with interest. In addition, the producer is required to pay liquidated damages at a rate equal to 50 percent of the interest rate applicable to CCC price support loans at the time of forfeiture. Liquidated damages will be assessed for the time period prescribed above.

All grain reserve agreements for a specific crop of a commodity approved prior to the effective date of this new Grain Reserve Program will remain subject to the program regulations which are applicable to those agreements. However, if producers have grain reserve agreements under a prior Grain Reserve Program which has not been called, the Secretary, may, at his discretion, permit such producers to convert prior grain reserve agreements to the new Grain Reserve Program established by this interim rule by executing new agreements.

If a commodity served as collateral for a grain reserve loan which was terminated as a result of a call, such commodity will not be eligible for entry into the Grain Reserve Program implemented by this interim rule.

Because the national average market price as determined and announced by CCC is currently above the trigger release level of $1.65 per bushel, 1982-crop oats will not be eligilble for entry into the reserve at this time.

List of Subjects in 7 CFR Part 1421.

Grains, loan programs/agriculture, price support programs, warehouses.

Interim Rule

Accordingly, 7 CFR Part 1421 is amended by adding a new "Subpart—Regulations Governing the Grain Reserve Program for 1982 and Subsequent Crops and Alternative Program for 1981 and Prior Crops" to read as follows:

1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

* * * * *

Subpart—Regulations Governing the Grain Reserve Program for 1982 and Subsequent Crops and Alternative Program for 1981 and Prior Crops

Sec.

1421.740 General statement.
1421.741 Length of reserve agreement.
1421.742 Limit on reserve quality.
1421.743 Program availability.
1421.744 Eligibility requirements.
1421.745 Applicability of the general regulations governing price support for the 1978 and subsequent crops.
1421.746 Warehouse receipts.
1421.747 Quantity eligible for grain reserve loans.
1421.748 Quality eligibility requirements of grain reserve loans.
1421.749 Storage rates.
1421.750 Storage payments.
1421.751 Interest rates.
1421.752 Commingling and replacement of grain.
1421.753 Trigger release levels, redemption requirements, early redemption charges, and emergency call.
1421.754 Maturity.

Subpart—Regulations Governing the Grain Reserve Program for 1982 and Subsequent Crops and Alternative Program for 1981 and Prior Crops

AUTHORITY Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 (b) and (c)); Sec. 110, 91 Stat. 951, as amended (7 U.S.C. 1445e).

§ 1421.740 General statement.

(a) The regulations in this subpart set forth the terms and conditions for the Grain Reserve Program which provides for extended farm storage and warehouse storage loans (hereinafter called "grain reserve loan(s)") with respect to eligible commodities as

provided in § 1421.744. Farm storage grain reserve loans will be evidenced by notes, security agreements, grain reserve agreements, and in certain cases chattel mortgages or financing statements. Warehouse storage grain reserve loans will be evidenced by notes, security agreements, and grain reserve agreements and will be secured by the pledge of warehouse receipts representing eligible commodities in approved warehouse storage. As used in the regulations in this subpart, "CCC" means the Commodity Credit Corporation and "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture.

(b) To participate in the Grain Reserve Program, a producer must request and enter into a grain reserve agreement with CCC at the local county ASCS office. Such agreement shall be for a period of time as specified in § 1421.741. Storage payments will be paid to the producer annually during the period of the grain reserve agreement for the time such commodity is eligible to earn such storage payments. Producers may redeem commodities under the Grain Reserve Program without repaying earned storage payments when the national average market price reaches the trigger release level determined in accordance with § 1421.753.

§ 1421.741 Length of reserve agreements.

Reserve agreements shall be for a period of not less than three years nor more than five years.

§ 1421.742 Limit on reserve quantity.

The maximum quantity of wheat and feed grains stored under this program shall be such quantity as determined and announced by the Secretary. In no event, however, shall such established maximum quantity be less than 700,000,000 bushels for wheat and 1,000,000,000 bushels for feed grains.

§ 1421.743 Program availability.

Producers with farm or warehouse-stored grain under CCC price support loan (hereinafter called "regular loan(s)") may participate in the Grain Reserve Program any time a reserve is in effect and is available for their commodity. The program will be available when announced by the Secretary for a specified crop of wheat and feed grains for such period of time and under such terms and conditions as may be deemed to be appropriate by the Secretary. However, entry of eligible commodities into the reserve will not be permitted when the national average market price for such commodity has reached the trigger release level and the reserve is in release as provided for by § 1421.753(a). Producers will be permitted to place an eligible commodity into the reserve when the national average market price for such commodity is again below such release level and the reserve is no longer in release. In addition, entry of eligible commodities into the Grain Reserve Program will not be permitted and such reserve will be terminated whenever the Secretary determines that emergency conditions exist and grain reserve loans have been called in accordance with the provisions of § 1421.753(c). A producer desiring to participate in the Grain Reserve Program shall file a request to participate in the program at the county ASCS office which disbursed the regular loan. An approved cooperative marketing association shall request a grain reserve loan at the county ASCS office which disbursed the regular loan or at its servicing agent bank which disbursed the regular loan.

§ 1421.744 Eligibility requirements.

(a) *Producer.* Whenever the Secretary has announced pursuant to § 1421.743 that the reserve is available for a specified crop of wheat or feed grains, a producer may, upon maturity of a regular loan, place the eligible commodity serving as collateral for such loan into the Grain Reserve Program by making application for and completing a grain reserve agreement. In order to encourage the orderly marketing of wheat and feed grains, the Secretary may authorize producers with eligible commodities to participate in an announced Grain Reserve Program prior to maturity of their regular loans with respect to a specified crop of wheat or feed grains. In such event, producers with eligible commodities under purchase agreements may also be eligible to participate in such grain reserve upon conversion of their purchase agreements into regular loan agreements. The eligibility of producers to place eligible commodities into the reserve will be on a first-come-first-served basis.

(b) *Commodities.* Wheat or feed grains serving as collateral for grain reserve loans must meet the quantity and quality requirements set forth in § 1421.747 and § 1421.748 of this subpart.

§ 1421.745 Applicability of the general regulations governing price support for the 1978 and subsequent crops.

The provisions of the General Regulations Governing Price Support for the 1978 and Subsequent Crops, published at 44 FR 2353, and corrected at 44 FR 6351, and any amendments thereto (hereinafter referred to as "General Regulations"), which are not inconsistent with provisions of this subpart, shall also be applicable to grain reserve loans entered into in accordance with the terms and conditions of this subpart.

§ 1421.746 Warehouse receipts.

(a) *General.* Warehouse receipts tendered to CCC under this Grain Reserve Program must meet all of the requirements of this section and any other requirements contained in this subpart, the general regulations, and the regulations governing the loan and purchase program for the applicable commodity.

(b) *Manner of issuance and endorsement.* Warehouse receipts must be issued in the name of the eligible producer or CCC. If issued in the name of the eligible producer, the receipts must be properly endorsed in blank so as to vest title in the holder of such receipts.

(c) *Requirements.* Warehouse receipts must: (1) Be issued by an approved warehouse; (2) represent a commodity which is deemed to be stored commingled; (3) be negotiable; (4) cover the eligible commodity actually in storage in the warehouse of original deposit, except that warehouse receipts may be issued by another warehouse if the eligible commodity was reconcentrated under a "Reconcentration Agreement and Trust Receipt" approved by CCC; (5) be registered or recorded with appropriate State or local officials when required by State law; and (6) show that storage charges have been paid through the end of the first year of the grain reserve agreement. In lieu of the latter requirement with respect to storage charges, the producer may provide evidence satisfactory to CCC that storage charges have been paid or have otherwise been provided for through the end of the first year of the grain reserve agreement.

(d) *Where a warehouseman is also owner.* If the warehouse receipt is issued for a commodity which is owned by the warehouseman, either solely, jointly, or in common with others, the fact of such ownership shall be stated on the receipt. In States where the pledge of warehouse receipts issued by warehousemen on their own commodity is invalid, the warehousemen may offer such commodity to CCC for loan only if such warehouse is licensed and operating under the U.S. Warehouse Act.

§ 1421.747 Quantity eligible for grain reserve loans.

(a) *Farm-stored.* The quantity eligible for a grain reserve loan is the measured quantity covered by the regular loan, as determined by the county committee.

(b) *Warehouse-stored.* The quantity eligible for a grain reserve loan is the quantity shown on the warehouse receipt or the supplemental certificate, if applicable, which secured the regular loan.

§ 1421.748 Quality Eligibility Requirements of Reserve Grain Loans.

(a) *General.* Quality will be determined according to the Official United States Standards for Grain, Federal Grain Inspection Service (FGIS), U.S. Department of Agriculture.

(b) *Wheat.* Wheat which enters the reserve must be merchantable for food and meet the quality eligibility requirements for securing a regular CCC price support loan. The wheat must: (1) Not contain mercurial compounds, toxin-producing molds or other substances poisonous to humans or animals; (2) not grade Ergoty or Treated; (3) not grade Weevily; (4) not grade Smutty; (5) not grade Garlicky; and (6) not grade Sample.

(c) *Feed grains.* Feed grains which enter the reserve must meet the quality eligibility requirements for securing a regular CCC price support loan. However, feed grains which grade "Sample Grade" will not be eligible to enter the reserve.

(d) *Farm-stored grain.* (1) Prior to approval of a grain reserve farm-stored loan, the commodity will be inspected by a representative of the county committee and the agreement will not be approved unless it is determined on the basis of such inspection that: (1) The commodity is such that it can reasonably be expected to be stored with safety until maturity of the loan; and (ii) the commodity meets the quality eligibility requirements in accordance with the provisions of § 1421.748 (b) and (c) above. If the loan inspector questions the eligibility of the commodity, a sample shall be drawn and submitted to FGIS for quality analysis.

(2) The producer is responsible for maintaining the quality and quantity of the farm-stored grain. Farm-stored grain which is delivered to CCC must meet the quality eligibility requirements specified in § 1421.748 (b) and (c) above. CCC may reject the delivery of farm-stored grain which does not meet the quality eligibility requirements, in which case the producer shall repay to CCC the loan principal with interest, plus unearned storage payments. If CCC accepts the delivery of the ineligible commodity, the producer shall repay to CCC the loan principal with interest, plus unearned storage payments, less the settlement value of the commodity as determined in accordance with the settlement procedures set forth in 7 CFR 1421.22.

§ 1421.749 Storage rates.

(a) Producers will be paid per annum storage payments at the initial rate of 26.5 cents per bushel for wheat, barley, and corn; 20 cents per bushel for oats; and 47.32 cents per hundredweight for sorghum. These rates may be changed from time to time by an announcement by the Secretary and any new agreements would reflect such changes.

(b) When storage is computed for less than one year, appropriate daily rates will be used, which will not be less than: (1) .0726 cents per bushel for wheat, barley and corn; (2) .1296 cents per hundredweight for sorghum; and (3) .0548 cents per bushel for oats. Annual storage payments shall be adjusted and paid in accordance with the provisions set forth in § 1421.750.

§ 1421.750 Storage payments.

(a) *Time.* Advance storage payments shall be paid annually on the date the grain reserve agreement is approved and each anniversary date thereafter. However, storage payments will not be made when storage credit is not being earned as provided for in §1421.750 (d) if the national average market price is at or above the trigger release level. If CCC subsequently determines that the price has fallen below the applicable trigger release level, storage payments will be made for the remainder of the year. Storage payments for the second year and any subsequent year will not be made to a producer having a grain reserve warehouse loan until the producer furnishes written evidence to CCC that at least the next year's storage payment has been paid to the warehouseman or arrangements for such storage payment have been made with the warehouseman. If the producer fails to provide such written evidence within a reasonable time, the county ASCS office shall call such loans. If, within 10 days after the date the loan is called, the loan is not repaid or evidence is not furnished to CCC that storage has been paid or that arrangements for such storage have been made, title to the commodity shall vest in CCC on the eleventh day and the producer shall be considered to have voluntarily forfeited his commodity to CCC and shall be subject to the voluntary forfeiture provisions of § 1421.753(b).

(b) *Storage payment units.* Storage payments for farm-stored grain reserve loans shall generally be based upon the quantity of such commodity serving as collateral for a regular loan which is converted to a loan under the Grain Reserve Program. However, such payments can be based on the quantity of such commodity measured for a grain reserve loan when such measured quantity is greater than the quantity of such commodity serving as collateral for the regular loan.

(c) *Storage credit.* Storage credit for less than one year will be computed on a daily basis.

(d) *Eligible storage credit.* Storage credit shall be allowed for the duration of the loan, except that no storage credit shall be earned between the day following the second consecutive CCC announcement that the national average market price for the commodity is equal to or exceeds the trigger release level and the date of any subsequent announcement by CCC that the market price is again below the trigger release level for such commodity. Any unearned advance storage payments will be subtracted from any future storage payments or will be collected when the loan collateral is redeemed by the producer or forfeited to CCC.

(e) *Unearned storage credit.* No storage payment shall be earned if the producer: (1) Has made any false representation in the loan documents in obtaining the loan or in settlement of the loan; (2) makes an unauthorized disposition of the commodity with intent to defraud CCC; (3) abandons the commodity; or (4) negligently or otherwise impairs the commodity.

§ 1421.751 Interest rates.

(a) As provided in the Note and Security Agreement signed by the producer, each grain reserve loan shall bear interest during the first year at the rate applicable to such Note and Security Agreement as well as any subsequent increased or decreased rate of interest which may be determined and announced by the Secretary.

(b) Except as provided in this subsection, grain reserve loans shall not bear interest after the first year. However, notwithstanding any period during which interest may otherwise be waived, interest will be charged for any period beginning the day following the second consecutive CCC announcement that the national average market price for the commodity is equal to or exceeds the trigger release level for such commodity and ending the date of any subsequent announcement by CCC that the market price for the commodity is again below the trigger release level for such commodity. Such interest will

accrue at the rate applicable to CCC price support loans when interest resumes.

§ 1421.752 Commingling and replacement of feed grains.

(a) *Commingling.* In the case of farm storage, grain in the grain reserve may be commingled with other eligible or ineligible grain which is from the same or any other crop year and which is of the same class if: (1) The county Agricultural Stabilization and Conservation (ASC) committee gives prior written approval of such commingling, and (2) the county ASCS office inspects and measures the grain at the producer's expense prior to commingling.

(b) *Replacement.* Farm-stored grain place in the reserve may be replaced with other grain of the same kind which is of equal or better quality and which is produced by the borrower if: (1) The county ASC committee gives prior written approval of such replacement; (2) the quantity of grain to be used for replacement is in storage on the farm or the county ASC committee has authorized removal of the reserve grain to licensed storage before replacement in accordance with § 1421.752(c); (3) the county ASC committee inspects and measures, at the producer's expense, the quantity of grain which is to replace the reserve grain before removal of the reserve grain; and (4) the county ASC committee determines that the quality of grain which is to replace the reserve grain is equal to or better than the quality of grain serving as collateral for a grain reserve loan. Disposition of farm-stored grain in the Grain Reserve Program without prior written approval from the county ASC committee will be considered unauthorized disposition.

(c) *Licensed storage.* The producer may be authorized to move farm-stored grain in the Grain Reserve Program to licensed warehouse storage before replacement if, prior to the movement of such commodity, the following conditions are met: (1) A written request to do so is filed in the county ASCS office; (2) approval of the county ASC committee is granted in writing; (3) the county ASCS office inspects and measures the grain, at the producer's expense, prior to removal; (4) the grain is moved to licensed storage within 30 days after approval is granted; and (5) an endorsed negotiable warehouse receipt for such grain is deposited with the ASCS County Executive Director (CED). The producer shall agree to remain liable for all charges incident to the storage of the grain in the warehouse and CCC in no way shall be liable for any such charges. The warehouse receipt shall be returned to the person who deposited it with the ASCS CED when the grain which is used to replace the grain covered by the warehouse receipt is placed in farm storage and the county ASCS office has determined by inspection and measurement that: (i) There is a sufficient quantity of grain of the same kind in storage; and (ii) the quality is equal to or better than the grain represented on the warehouse receipt. Whenever a producer does not place grain in acceptable farm storage as provided in 7 CFR § 1421.7 prior to maturity of the grain reserve agreement, the producer's interest in the grain which is represented by the warehouse receipt and held by the ASCS CED, shall tranfer to CCC.

(d) *Release for sale or livestock feed.* The producer may be authorized to move farm-stored grain in the Grain Reserve Program for delivery to a buyer for sale or for livestock feed thirty days before the producer intends to have replacement stocks in place if, prior to the movement of the grain, the following conditions are met: (1) A written request to do so is filed in the county ASCS office; (2) approval of the county ASCS Committee is granted in writing; (3) the county ASCS office inspects and measures the grain, at the producer's expense, prior to removal; (4) the grain released for livestock feed will be fed to the producer's own livestock; and (5) an inspection of the unharvested grain, which is made at the producer's expense, indicates that there will be sufficient eligible encumbered production of equal or better quality to replace the grain in the Grain Reserve Program.

§ 1421.753 Trigger release level, redemption requirements, early redemption charges, and emergency call.

(a) *Trigger release level.* Commodities serving as collateral for grain reserve loans shall not be eligible for redemption without the producer incurring liability for liquidated damages unless the national average market price of the commodity as determined and announced by CCC is equal to or above the trigger release level established for such commodity. The trigger release level will be established and announced by the Secretary. The trigger release level for wheat shall be $4.65 per bushel; barley, $2.65 per bushel; corn, $3.25 per bushel; oats, $1.65 per bushel; and sorghum, $5.54 per hundredweight. Any such level may be changed by an announcement by the Secretary. Any trigger release level which is subsequently established and announced by the Secretary shall be applicable only to those reserve agreements executed after the announcement of such new levels. The national average market price for each commodity, except barley, will be considered by CCC to have reached the trigger release level when the five-day national average price for the respective commodity, at selected major markets, published by the Agricultural Marketing Service (AMS), adjusted downward to reflect prices received by farmers by the difference between: (1) The mid-month prices published by the Statistical Reporting Service (SRS) for the respective commodity for the previous month, and (2) the average mid-month price for the same month at selected major markets, published by AMS, equals or exceeds the trigger release level for the respective commodity. The national average market price for barley will be considered by CCC to have reached the trigger release level when the five-day average price for barley published by AMS for the major market which serves the area where the majority of the barley in the reserve is stored, adjusted downward to reflect prices received by farmers by the difference between (i) the mid-month price published by SRS for feed barley for the previous month in the area where the majority of the barley in the reserve is stored and (ii) the average midmonth price for barley published by AMS for the same month at the major market which serves the area where the majority of the barley in the reserve is stored, equals or exceeds the trigger release level for barley.

Producers will be advised when the market reaches the trigger release level and their loans are eligible for redemption without liability for liquidated damages and other applicable charges. Such determinations shall be made and announced by CCC and shall be applicable until a subsequent announcement is made. When the trigger release level is reached for a commodity, the initial release period shall be for the remainder of the month in which release is announced plus the next month. Subsequent announcements to continue or discontinue release will be made at the end of the initial or subsequent release period. Any subsequent announcement to continue release will be for the month following the preceding release period. If a subsequent announcement indicates that the national average market price for the commodity is below the applicable trigger release level, the terms of the reserve agreement and the regulations which are applicable prior to release shall again apply and the commodity will not be eligible for

redemption without liability for liquidated damages and other applicable charges.

(b) *Redemption or voluntary forfeiture.* (1) Except, in case of emergency release as provided in paragraph (b)(2) hereof, if a producer redeems the commodity when the national average market price for such commodity is below the applicable trigger release level, such producer will be required to repay the grain reserve loan pricipal with interest. In addition, such producer will be required to repay with interest storage payments previously received by the producer with respect to such commodity for the period during which liquidated damages apply, as specified below. The producer is further liable for liquidated damages at the rate of 50 percent of the interest rate applicable to CCC regular loans at the time of redemption. Liquidated damages will be assessed for the period beginning on the later of: (i) The date following the last date the producer had an opportunity to repay the loan during a release period; or (ii) the date the reserve agreement was approved (in the case of converted reserve agreements, the date the original reserve agreement was approved). The period during which such liquidated damages will be assessed will end on the date of repayment. If a producer voluntarily forfeits the commodity to CCC prior to the time of any announcement that the applicable trigger release level has been reached, such producer shall be required to repay with interest all storage payments previously received by the producer with respect to such commodity for the period during which liquidated damages apply. In addition, the producer will be liable for liquidated damages at a rate equal to 50 percent of the interest rate applicable to CCC price support loans at the time of forefeiture. Liquidated damages will be assessed for the time period prescribed above.

(2) In the case of warehouse-stored loans, if it is determined by CCC that the storage space is no longer available, the producer may repay the loan or forfeit the commodity to CCC without incurring liability for liquidated damages and may retain earned storage payments. In the case of farm-stored loans, the producer may repay the loan or forfeit the commodity to CCC without incurring liability for liquidated damages and may retain earned storage payments if it is determined by CCC that there is insect infestation which cannot be controlled, the commodity is subject to damage by flood or fire, there is damage to the storage structure, the producer has lost control of the storage structure, or the commodity is going out of condition.

(c) *Emergency call.* Notwithstanding any other provision of this rule, the Secretary may require producers to repay grain reserve loans prior to the maturity date of such loans if the Secretary detemines that emergency conditions exist which require that the commodity which is serving as collateral for the loan be made available in the market to meet urgent domestic or international needs and such determination and the reasons therefore are reported to the President, the Committee on Agriculture, Nutrition, and Forestry of the Senate, and the committee on Agriculture of the House of Representatives at least fourteen days before taking such action. Repayment shall consist of loan principal and interest, plus unearned storage. If the called loan is not redeemed within the time prescribed by the Secretary, CCC may take title to the commodity.

§ 1421.754 Maturity.

Grain reserve loans mature and are due and payable on the last day of the 36th calendar month after the later of: (1) The date the regular loan matured, or (2) the month following the month in which the grain reserve agreement is approved. However, notwithstanding the foregoing, when the grain reserve loan is an extension of an unmatured regular loan, the grain reserve loan matures and is due and payable on the last day of the 36th month following the month in which the grain reserve agreement is approved.

Signed at Washington, D.C., on August 9, 1982.

John R. Block,

Secretary.

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Proposed regulations.

SUMMARY: The Office of Investment, SBA, is generally revising and reorganizing the regulations governing the operations of Small Business Investment Companies in order to clarify and improve the effectiveness of the basic regulatory provisions. The supplementary information section below explains the revisions & reorganization undertaken. The three appendices to Part 107 are not affected by this proposed revision.

DATE: Comments must be received on or before October 15, 1982.

ADDRESS: Written comments, in duplicate, are to be addressed to the Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Robert G. Lineberry, Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416, 202-653-6843.

SUPPLEMENTARY INFORMATION: Proposed revision 6 set forth below incorporates the subject matter of Part 107 as originally published together with subsequently published amendments in the **Federal Register.** Substantial textual changes have been made throughout to clarify and improve the effectiveness of basic regulatory provisions; and it became necessary to renumber the majority of the proposed regulations for purposes of clarity and continuity.

Section 107.3, *Definition of terms,* has been amended by the addition of new terms, some of which were set forth elsewhere in Part 107, and by changes in the definitions of terms presently set forth in this section.

"Associate of a Licensee" is amended by deletion of the word 'small' in paragraph (f) of the definition. The intent of the change is to extend the definition of 'Associate of a Licensee' to all concerns related to a Licensee in the manner described in paragraph (f).

'Cost of Money' as previously set forth in § 107.301(c)(5), under the heading "Elements of cost." The definition has been substantially revised. It is amended to apply only in the context of debt financing, but it would cover all consideration whatsoever that may be given for a debt financing, unless clearly excluded. Excluded items include commitment fees, management services fees, prepayment penalties, certain distributions from retained earnings, and certain payments in redemption of equity securities. While 'front-end costs' and discounts remain includible in 'Cost of Money' they are no longer required to be attributed to the year of payment, but may be prorated over the actual period of the financing.

'Debt Securities' is a new term whose content was formerly covered in § 107.301(b)(3). The new definition reflects the obvious difference between a straight equity investment and a convertible debt financing, or a loan with options or warrants.

"Equity Securities" has been redefined to exclude debt instruments that include a right to convert or otherwise acquire equity securities.

"FFB Rate" was formerly defined in § 107.301(c)(1)(i).

"Lending Institution" is a new, self explanatory, definition.

"Loan" is a new definition implementing the distinction drawn by SBA between a straight loan and a loan with a convertibility feature, or with options or warrants.

"1980 Act Company" is a new, self explanatory term.

"Private Capital" has been redefined to exclude State funds (including funds invested by the subdivisions or instrumentalities of a State) and Federal funds generally from the definition for purposes of leverage eligibility. The only Federal funds includible in "Private Capital" for leverage purposes are funds invested in a Licensee pursuant to a Federal statute that requires the inclusion of such funds in "Private Capital" (for example, Title VII of the Community Services Act of 1974, as amended); and Community Development Block Grant Funds invested before the publication date of this proposal, under the authority of the Housing and Community Development Act of 1974, as amended.

This proposal brings SBA's regulations into conformity with the Comptroller General's decisions of July 29, 1980 (59 Comp. Gen 635), January 30, 1981 (60 Comp. Gen. 210), and April 7, 1982 (as yet unpublished, File No. B–197439) concerning the leverage eligibility of Federal funds. The proposal to make State funds ineligible for leveraging will make no significant change in SBA's practice inasmuch as funds heretofore invested by States or their subdivisions in Licensees have been of Federal origin.

This proposed regulation is justified (insofar as it is not mandated by the July 29 decision of the Comptroller General) by the fact that Congress granted SBA authority to extend leverage to Licensees in order to "stimulate and supplement the flow of *private* equity capital and long-term loan funds" (emphasis added) to small business through small business investment companies. Reductions in SBA's leveraging authority make it necessary to insure that limited resources are used to stimulate and supplement private investment in Licensees, and not diverted toward matching nonprivate funds. If a Federal agency or a State determines that its objectives would be best accomplished by funding a Licensee, it may do so, but these funds will not be leveraged.

Licensees that have received leverage based on funds that would be ineligible for leverage under the terms of this proposed regulation and the Comptroller General's decision, would be allowed to retain such leverage until the maturity date of the debentures evidencing the leverage in question. Debentures based on State or Federal funds will not be refinanced, but SBA may, in its discretion on a case-by-case basis, to the extent authorizd by the Small Business Investment Act, extend the maturity of such debentures for the purpose of insuring their orderly liquidation. The final rule relating to the leverage eligibility of Federal or State funds would, in order to conserve limited resources, be effective as of the date of publication of these proposed regulations.

"Short-term financing" has been redefined as a financing with a term of less than seven years. Most financings by Licensees are for a term of seven years or longer.

Section 107.101(d)(1) has been revised to require a minimum of $1,000,000 of private capital for an SBIC to be licensed. This proposal to require a license applicant to have not less than $1,000,000 in private capital is based on Section 301(c) of the Small Business Investment Act, which requires SBA, before granting a license, to consider such matters as the applicant's "probability of successful operations * * * including adequate profitability and financial soundness." A comparison of the operations of SBICs capitalized at $1,000,000 and more supports the conclusion that an applicant with less than $1,000,000 in private capital does not have a reasonable probability of success as an SBIC, particularly in view of recent inflationary trends and the limitation imposed by the Small Business Investment Act on the amount of funds (based on private capital) which may be invested in one small concern. No existing SBIC Licensees or application on file with SBA on the date this proposal is published as a final regulation would be affected by the proposed increase in the minimum capitalization requirement.

The words "directly or indirectly, beneficially or of record" have been added to § 107.101(e) to include all owners of ten percent or more of stock of an SBIC which is purchased through the use of borrowed funds.

Sections 107.102 and 107.601(f) have been amended to increase the application fee for licensing and transfer of control to $5,00 to reimburse SBA for the cost of processing such applications. In the judgement of the Administration, the proposed fees represent fair and equitable user charges. In accordance with applicable statutory provisions, the Administration has taken into consideration direct and indirect costs to the Government of necessary services performed, value to the recipients, public policy and interest served, and other pertinent factors involved.

Section 107.202(b)(3) has been rewritten to lengthen the time in which the principal of a debenture or loan may not be amortized, from three to five years and to make clear that such investments must be subordinated by their terms to all other borowings and unsecured in order that these investments can qualify as Venture Capital Financing for leverage in excess of three hundred percent. The proviso in § 107.202(d) has been rewritten to eliminate SBA approval for a temporary lesser ratio of Venture Capital Investments in an SBIC's portfolio.

Section 107.203(b) has been amended to include the words "preferred securities" in appropriate subsections of the regulations to enable SBA to "put" such preferred securities to Section 301(d) SBICs in the event of violations of the regulations or default in payments to SBA or bankruptcy of the SBIC. The intention of the change is to make it clear that SBA does not have, and has never had, the authority to purchase the preferred securities of/or extend any Leverage to, any issuer other than one operating in accordance with SBA regulations. It follows that when the issuer ceases so to operate, its right to retain SBA leverage is placed in jeopardy. SBA recognizes that its right to receive payments in redemption of preferred securities put to any Licensee may be subordinated in favor of any creditors of the Licensee in question.

Section 107.203(d) has been amended to reduce the permissible capital impairment percentage of a section 301(d) Licensee to seventy-five percent of the SBIC's private capital. A section 301(d) Licensee whose capital impairment on the effective date of this regulation was 75 percent or more shall not automatically be in default, but, if this regulation is adopted, shall be given 90 days from the effective date of this regulation to advise SBA. The last sentence of § 107.205(d)(3) has been eliminated since it was confusing and §§ 107.205(d)(4) and the former § 107.205(e) were eliminated as being duplicative of existing regulations or SBA procedures.

Section 107.301(a) has been amended to extend the minimum period of Financing to Disadvantaged Concerns from thirty months to five years for the permissible fifty percent of the SBIC's

portfolio and the minimum term of all other financings has been extended from five years to seven years. Changes in other regulations have been made where appropriate to incorporate this extension.

Extensive revisions have been made in § 107.302. The "Cost of Money" ceiling set forth in this proposed regulation would apply only when a Licensee makes a loan to, or purchases the Debt Securities of, a Small Concern. The regulation also provides for different cost of money limitations, depending on whether the SBIC has made a loan or has purchased Debt Securities. An SBIC may not make a secured loan at the maximum permissible interest rate and, at the same time, have the right to convert all or part of its loan into Equity Securities, or acquire options or warrants. Some SBICs had used debt financing with equity features, coupled with a redemption provision, to exact excessive interest payments. The intent of the proposed regulation is that an SBIC desirous of a convertibility privilege or options or warrants must extend a significant consideration for them: Lower interest rate and waiver of collateral.

The overline regulation, proposed § 107.303, has been extensively revised to encourage the purchase of Equity Securities by SBICs. SBICs would be permitted to take advantage of appreciation in the value of marketable securities in their portfolios to make investments in excess of 20 percent of paid-in capital and paid-in surplus. SBICs using this privilege would be required to document the appreciation of marketable securities and to take corrective steps in the event of depreciation subsequent to utilization of the privilege.

Proposed § 107.321 would cover redeemable Equity Securities and redeemable options or warrants. As previously noted, some SBICs have used redeemable stock (or more often, redeemable warrants or options) as a device to exact excessive interest payments from debtors. If an SBIC acquires redeemable securities of a small concern, even in connection with a debt financing, payments made in redemption of such securities will not be subject to any ceiling if the redemption provisions conform to the terms of the proposed regulation. The intent of the proposed regulation is that the redemption price may be based only on the subsequent operations of the small concern, and not expressed in terms of a specific dollar amount or multiple of price paid by the SBIC for the securities in question.

Section 107.401 has been amended to eliminate the requirement that a funded reserve of ten percent be maintained against any guarantees that an SBIC has outstanding. The Administration determined that this reserve will not be required since the total amount of guarantees that can be issued by any SBIC is limited to the amount of its private capital.

The language in § 107.403(b)(1) has been rewritten to clarify the intent of this regulation which permits SBICs to make short-term financing to small concerns for interim financing when long-term financing is contemplated, for the protection of an existing financing which the SBIC has in the smal concern, or for financing of a change of ownership of a small concern as permitted by § 107.711 of the Regulations. Certain SBICs have used this section to make short-term loans permitted under this section and then rolled them over periodically, thereby availing themselves of an opportunity to call such loans at the end of the short-term period and depriving the small concern of the ability to plan with long-term financing. To preclude this, the regulation stipulates that the maximum aggregate period for which SBICs may make short-term financings under this section may not exceed one year.

The word "equity" has been deleted from § 107.404 to permit SBICs to purchase from or through underwriters other investments that may represent debt financing, which the Administration has noted is occuring with increasing frequency.

Section 107.501(b)(2) and (4) and § 107.709(a) have been amended to eliminate the need for management contracts to be approved on an annual basis by SBA. This section, as proposed, requires such contracts to be approved by the small concern, SBIC and SBA only when the contract is first entered into. Thereafter, if the contract is renewed it must be approved annually by the small concern and the SBIC and only submitted to SBA for approval if a material change is made in the contract subsequent to SBA's previous approval.

To reduce the paperwork burdens of SBICs and of SBA, § 107.601 has been amended to eliminate the requirement of prior SBA approval of every transaction involving 10 percent or more of SBIC's stock or Partnership Capital. Since prior SBA approval is required for any transfer that causes the transferee to become the owner of 10 percent or more of the SBIC's stock or partnership capital, the proposed change does not affect SBA's ability to monitor significant changes in an SBIC's ownership.

Section 107.705(b) has been revised to eliminate the terms and conditions upon which an SBIC can issue stock options. It has been SBA's observation over a considerable period, that the use of this section by the SBIC industry has been practically nil.

Section 107.707 has been amended to delete the requirement that an SBIC purchasing securities evidencing indebtedness from another SBIC must make such purchase with recourse against the seller. This deletion has been made at the request of the industry and SBA agrees that the SBIC management should asume the responsibility of determining whether to obtain recourse against the seller.

Section 107.708 is revised to limit to one year the maturity of securities in which an SBIC's idle funds may be invested.

Section 107.801(g) would permit SBA to approve an extension of Control of a Small Concern if unique circumstances are demonstrated to SBA's satisfaction.

Section 107.802 has been rewritten to remove ambiguous language which has caused confusion as to the amount of its private capital an SBIC may reduce without SBA approval.

Section 107.901(c)(2) would make it clear that an SBIC may not finance the acquisition of real estate that is to be held for leasing, even if such real estate is to be promptly and substantially developed. The change in language does not reflect a change in substance.

Section 107.901(d) would authorize SBICs to finance any small concern whose business activity was neither illegal nor inconsistent with free enterprise.

Section 107.901(g) would exclude founds used for the purchase of capital goods from the fifty-percent rule, and thereby conform the language of the regulation to SBA's consistent interpretation.

Over a number of years, SBA has fund that an excessive percentage of the capital and leverage funds invested in SBICs has not been used to finance small business, but instead in "idle funds". Accordingly, the existence of the facts set forth in § 107.902(b) of the proposed regulation would not merely raise a presumption of inactivity in violation of SBA regulations, but would, instead, constitute a violation. Although the proposed regulation does away with the concept of justifiable inactivity, it would permit a lower percentage of idle funds that an SBIC must now invest in

small businesses in order to avoid a violation based on inactivity.

Present regulations governing the use of Financing proceeds to pay debts due Associates of the SBIC and joint financings by an SBIC and an Associate afford exemptions with respect to debt due, or joint financings by, "Associates in the normal course of business involving lines of credit or short-term financing." Proposed §§ 107.903(b)(4) and 107.903(c) would limit the applicability of the exemption to debts owed to, or joint financings by, Associate Lending Institutions. The change is intended to preclude the use of the SBIC's funds for the payment of excessive interest charges to Associates of the SBIC, and to preclude the SBIC from participating in a financing package that enables the SBIC's Associate to charge interest in excess of that permitted to be charged by regulated Lending Institutions. The change would benefit small concerns.

Proposed § 107.903(c)(2) would allow Associates of an SBIC to participate in the initial equity financing of a small concern without prior SBA approval. Under present regulations, any small concern in which an Associate held, or acquired, an equity interest of 10 percent or more within six months before or after the date of the SBIC's financing is itself deemed an Associate of the SBIC as of the date of the SBIC's financing.

Section 107.1001 would increase the fees charged for examinations of SBICs by SBA to reflect the increase in cost to SBA. This Section has also been amended to require section 301(d) SBICs to pay the assessment for examinations commencing with the first examination.

Section 107.1002(f) was amended by changing from ten to thirty the days in which to file a report to SBA of instances where an SBIC is involved in litigation.

Section 107.1003 was amended to accommodate the growing practice of wire transfer of funds and to give SBICs an option of having dual signatures over disbursement of funds or withdrawal of securities, or maintaining a Fidelity Bond covering the individual who has control over or access to cash, securities or other property of the SBIC.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs/business, Small businesses.

Review for Executive Order 12291 and the Regulatory Flexibility Act

For the purpose of Executive Order 12291, effective February 17, 1981, SBA hereby certifies that these proposed regulations if promulgated in final form, taken either individually or as a whole, do not constitute a major rule(s) within the meaning of the Executive Order.

For the purpose of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA has determined that certain of these proposed rules, if promulgated in final form, will have a significant economic impact on a substantial number of small businesses. These individual regulations are identified below, and an initial regulatory flexibility analysis for each such proposal is also provided in each instance.

1. Proposed definition of "Private" capital, § 107.3. Reason for Action: On July 29, 1980, the Comptroller General issued a decision (59 Comp. Gen. 635), holding that SBA has no authority to leverage Federal funds invested as private capital in SBICs unless the funds are made available under statutory authority which stipulates that such funds shall be included in private capital. A subsequent opinion of the Comptroller General dated January 30, 1981 (60 Comp. Gen. 210) specifically held that SBA is authorized to include certain Community Development Block Grant funds in the private capital of an SBIC. SBA has decided, based on these decisions, to recognize as private capital for leverage purposes only those funds so mandated by statute and Community Development Block Grant funds invested in SBICs before the date of publication of this proposed regulation.

Objectives: To stimulate and supplement the flow of private capital and long-term loan funds to small concerns.

Legal Basis: Section 102 of the Small Business Investment Act and Comptroller General's opinions cited above.

Small Entities Affected: Not significant. No more than 19 SBICs are recipients of nonprivate (Federal and State) funds. The amount of funds that would be rendered ineligible for leveraging is not more than $17,826,000.

Increased Recordkeeping: None.

Federal Rules Which Duplicate: None.

In addition, there are no significant alternatives to this proposed rule which accomplish the stated objectives of the applicable statutory provision and which minimize significant economic impact on small entities.

2. Proposed definition of "Cost of Money," § 107.3. Reasons for Action: There has been confusion for years among SBICs as to what elements will be considered in computing the cost of money made available to a portfolio concern.

The industry has been cited in numerous instances by Federal examiners for exceeding cost of money because prepayments were included as an element of cost and discounts or deferred interest payments caused the percentage of cost to the small concern in a single year to exceed the maximum permitted.

The maximum cost that an SBIC may charge a small concern for debt securities received is also being reduced in this proposal from seven percentage points above the current FFB rate to four percentage points and such debt securities must be unsecured. SBA has determined that when an SBIC receives a security that gives it access to the equity of the small concern, the concern should not be required to pay the same cost of money or provide the security normaly required for a straight loan.

Objectives: To clarify for the SBIC industry and Federal examiners the elements and nonelements to consider in determining the cost of money. To provide a lesser cost of money and better terms for a small concern which is willing to give a portion of its net worth to the investor.

Legal Basis: Section 308(c) of the Small Business Investment Act.

Small Entities Affected: No small entities will be affected by the definition of cost of money. Approximately 480 SBICs will be affected by the new regulations. All SBICs as well as approximately 1,000 small concerns a year will be affected by the terms of debt securities.

Increased Recordkeeping: There will be no increase or decrease in the reporting requirements or recordkeeping.

Federal Rules Duplicated: Not known.

In addition, there are no significant alternatives to this proposed rule which accomplish the stated objectives of the applicable statutory provision and which minimize significant economic impact on small entities.

3. Proposed Minimum Capital Standard, § 107.101(d). SBA proposes to require that every licensee must have:

(1) Private Capital of at least $1,000,000: *Provided, however,* That this $1,000,000 minimum capital requirement shall not apply with respect to any license application on file with SBA on the date of publication of this regulation in final form, nor with respect to any license issued on the basis of such application. Licensees which were licensed on or after October 1, 1979, and before the effective date of this regulation shall have a Private Capital of at least $500,000; Licensees licensed prior to October 1, 1979, shall have a Private Capital of at least $150,000; and

(2) Taking additional resources into account, adequate capital to assure a reasonable prospect that it will be

operated soundly and profitably, and managed actively and prudently in accordance with the Small Business Investment Act and these regulations.

Reason for Action: To assure viability a of SBICs.

Objective: To increase capital base of SBICs in order to assure viability.

Legal Basis: Section 302(a) of the Small Business Investment Act.

Small Entities Affected: None. No existing SBICs or applicants will be affected. This proposal may, however, reduce applications for licenses by one-third.

Increased Recordkeeping: None.

Federal Regulations Duplicated: None.

4. Minimum Period of Financing, § 107.301. SBA is proposing to extend the minumum period of financing to small concerns by SBICs. The current regulations allow SBICs to provide financing to disadvantaged concerns for a minimum of 30 months and all other financings are for a minumum of five years. The proposed regulation extends the 30 month term to five years and five year term to seven years.

Reason for Action: To provide more long-term funds to small concerns.

Objective: Make funds available on a longer basis to small concerns, thereby reducing debt service payments.

Legal Basis: Section 308(c) of the Small Business Investment Act.

Small Entities Affected: Approximately 1,000 small concerns per year who receive such financing from SBICs as well as approximately 481 SBIC's.

Increased Recordkeeping: No more and no less than existing.

Federal Regulations Duplicated: None.

5. Proposed Overline Limit, § 107.303. In order to encourage SBICs to become more equity oriented, SBA proposes a regulation which will permit SBICs which have appreciated marketable securities in their portfolios to add the net appreciated value to their private capital base, thereby increasing the amount that may be invested in any one small concern.

Reason for Action: To encourage SBICs to make equity investments in small concerns.

Objectives: To increase number of equity investments by SBICs.

Number of Small Entities Affected: The principal effect will be on SBICs which have appreciated marketable securities in their portfolios. This will constitute approximately 20 to 30 SBICs. A further effect will be on the small concerns in which these SBICs invest. An estimate of the number is not feasible.

Increased Recordkeeping: The SBICs which elect to use this regulation will be required to maintain quarterly records in their files for SBA review. There will be no affect on the small concerns being invested in.

Federal Rules Duplicated: None.

6. Proposed Redemption Provisions § 107.321. SBA is initiating a new regulation to govern the redemption of equity securities, options or warrants that SBICs acquire from small concerns.

Reason for Action: The SBIC industry had adopted the practice of requiring small concerns to enter into agrements to buy back stock, options or warrants that the SBIC purchases from them; often to the detriment of the small concern.

Objective: To make a more equitable arrangement to allow SBICs to divest themselves of these securities and yet protect the small concern involved.

Legal Basis: Section 308(c) of the Small Business Investment Act.

Number of Entities Affected: Approximately 1,500 small portfolio concerns per year as well as approximately 481 SBICs.

Increased Recordkeeping: No more or less than presently exists.

Federal Rules Duplicated: None.

7. Proposed Inactivity Standard, § 107.902. SBA is revising its inactivity regulation to make it a per se violation of the regulation to be inactive whereas inactivity currently raises a rebuttable presumption of violation.

Reason for Action: SBA has not been able to enforce this regulation since the presumption is rebuttable.

Objective: To require SBICs to be actively engaged in the purposes for which they have been licensed.

Legal Basis: Section 302(a) of the Small Business Investment Act.

Number of Entities Affected: Approximately 25 SBICs.

Increased Recordkeeping: None.

Federal Rules Duplicated: None.

Accordingly, pursuant to the authority set forth in Sec. 308(c) of the Small Business Investment Act, as amended, (15 U.S.C. 687(c)) it is proposed to revise Part 107 of Title 13, Code of Federal Regulations, (except for Appendices A, B, and C which are not affected) to read as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

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107.1 Scope of Part 107.
107.2 Information, forms, and instructions.

Definitions

107.3 Definition of terms.
107.4 Limited Partnership SBIC.

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Sec.
107.101 Operational requirements.

License

107.102 License application.
107.103 Public notice.
107.104 Transferability of license.
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Borrowing by Licensee

107.201 Funds to Licensee.
107.202 Leverage in excess of three hundred percent.
107.203 SBA purchase, sale, or guaranty of securities evidencing Leverage; events of default.
107.204 Collection or compromise of SBA claims.
107.205 Leverage for section 301(d) Licensees.

Financing of Small Concerns (Loan and Debt Financings; Equity Capital Financing; Guarantees and Commitments)

General Provisions and Loans

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107.302 Loans and Debt Financing; Cost of Money.
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Equity Capital

107.320 Equity securities.
107.321 Redemption provisions.
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107.401 SBIC guaranty of loans.
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107.501 Management services.

Control of Licensee

107.601 Changes in ownership or control of Licensee.
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Lawful Operations

107.701 Amendments to Act and regulations.
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107.704 Identification as an SBIC.
107.705 Consideration for issuance of Licensee securities.
107.706 Retention of investments.
107.707 Purchases of securities from another Licensee.
107.708 Deposits and investments of idle funds.
107.709 Investment Adviser/Manager.
107.710 Assets in liquidation.
107.711 Financing changes of ownership.
107.712 Section 301(d) Licensee wholly or partly owned by Licensee companies.

Restricted Activities

107.801 Control of small concern.
107.802 Voluntary capital decrease.

Sec.
107.803 Mergers, consolidations, and reorganizations.
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Prohibitions

107.901 Prohibited uses of funds.
107.902 Inactive Licensees.
107.903 Conflicts of interest.
107.904 Disposition of assets to Licensee's Associates or to competitors of Portfolio Concern.
107.905 No Government sponsorship.
107.906 Violations based on false filings and nonperformance of agreements with SBA.

Examinations, Accounts, Records and Reports

107.1001 Examination fees.
107.1002 Records and Reports.
107.1003 Internal control.
107.1004 Reporting changes not subject to SBA approval.

Compliance

107.1101 Exemption from civil penalty.

Exemptions

107.1201 Exemptions.
107.1202 Savings clause.
Appendix A—Audit Guide for SBICs.
Appendix B—Guide for the preparation of the Annual Report.
Appendic C—System of Account Classification.

Authority: Sec. 308(c), 72 Stat. 694, as amended (15 U.S.C. 687(c)); sec. 312, 78 Stat. 147 (15 U.S.C. 687d); sec. 315, 80 Stat. 1364 (15 U.S.C. 687g).

Regulations

§ 107.1 Scope of Part 107.

The regulations in this part implement Title III of the Small Business Investment Act of 1958, as amended. All Licensees, including section 301(d) Licensees, must comply with all applicable regulations and appendices.[1]

§ 107.2 Information, forms, and instructions.

All references in this part to SBA forms, and instructions for their preparation, are to the current issue of such forms. The forms have been filed with the Office of the Federal Register with the original document. Copies may be obtained from SBA.

Definitions

§ 107.3 Definition of terms. [2]

Act. "Act" means the Small Business Investment Act of 1958, as amended.

Articles. "Articles" means Articles of Incorporation or charter for a Corporate Licensee and the partnership agreement or certificate for an Unincorporated Licensee.

Assistance. "Assistance" or "Assisted" means Financing of or Management Services rendered to a Small Concern by a Licensee pursuant to the Act and these regulations.

Associate of a Licensee. "Associate of a Licensee" means:

(a)(1) An officer, director, employee or agent of a corporate Licensee; (2) a Control Person, employee or agent of an Unincorporated Licensee; (3) a manager or investment Adviser of any Licensee, which terms (manager or Investment Adviser) include any Person contracting with a Control Person of an Unincorporated Licensee to serve as manager or Investment Adviser to such Licensee, or (4) any person regularly serving a Licensee on retainer in the capacity of attorney at law; or

(b) Any person owning or controlling, directly or indirectly, ten percent or more of any class of stock of a corporate Licensee or of the partnership capital of an Unincorporated Licensee;

(c) Any officer, director, partner, manager, or employee of any Associate described in paragraphs (a) or (b): *Provided, however,* That subject to (b) above, a Person with no other relationship to any Associate described in paragraphs (a) or (b) but that of a limited partner shall not be considered an Associate of such Associate.

(d) Any person which directly or indirectly Controls or is Controlled by, or is under common Control with, a Licensee or any person described in paragraphs (a) and (b) of this definition; or

(e) Any close relative of any person described in paragraphs (a) and (b) of this definition; or

(f) Any concern in which (1) any person described in paragraphs (a) through (e) of this definition is an officer or director or (2) any such person (or group of two or more such persons acting in concert) who owns or Controls, directly or indirectly, a ten or more percent equity interest (exclusive of any interest attributable solely because of ownership of an equity interest in the Licensee).

(g) For the purposes of this definition, any person in any of the relationships described in paragraphs (a) through (f) of this definition within six months before or after the date on which the Licensee provided Assistance, shall be deemed to have been in such relationship as of the date of the Licensee's Assistance.

(h) A section 301(d) Licensee and a participant Licensee owning stock thereof, or securities evidencing a contribution to the partnership capital thereof, pursuant to § 107.712 as well as Associates of such section 301(d) Licensee and such participant Licensee shall be deemed Associates of each other.

Close relative. "Close relative" means ancestor, lineal descendant, brother or sister and lineal descendants of either, spouse, father-in-law, mother-in-law, son-in-law, brother-in-law, daughter-in-law, or sister-in-law.

Control. "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Licensee or a Small Concern whether through the ownership of voting securities by contract, or otherwise.

Control Person. "Control Person" means (1) a general partner of an Unincorporated Licensee, including all general partners of a partnership serving as general partner of an Unincorporated Licensee; (2) any officer, director, agent or employee of a corporate general partner of an Unincorporated Licensee, including any corporation that is a general partner in a partnership serving as general partner of an Unincorporated Licensee; and (3) any Person owning 10 percent or more of the stock of a corporate general partner of an Unincorporated Licensee.

Cost of Money. Generally, cost of money includes the total consideration payable by, or for the benefit of, the Small Concern, such as interest, discounts, fees, commissions and similar charges, and all other value given in consideration for a Loan or acquisition of Debt Securities. Redemption payments other than payments pursuant to § 107.321 are also included in their entirety. Cost of money does not include distributions from retained earnings which are proportionate to the value paid for Equity Securities, nor does it include fees for management services pursuant to § 107.501, bona fide commitment fees pursuant to § 107.402, or prepayment penalties pursuant to § 107.301(a). So-called "front end costs" and interest deferments shall be prorated over the term of the Financing and not attributed to the year of payment.[3]

[1] The accounting guidelines for SBICs include Audit Guide for SBICs, Guide for the Preparation of the Annual Report, SBA Form 468, and the System of Account Classification, and are set forth as Appendices A, B, and C to these regulations.

[2] Defined terms are capitalized hereafter.

[3] The SBA will use the *Financial Compound Interest and Annuity Tables,* Financial Publishing Company, Boston, Mass. 02215, in computing cost of money charged small concerns by SBICs.

Corporate License: see Licensee.

Debt Securities means securities evidencing a Loan with options or any right to acquire Equity Securities in a Small Concern or its affiliates (as defined in § 121.3–2) or which are convertible to such equity position and which are subordinated by their terms to all borrowings of the Small Concern except borrowings from officers, directors and owners of the Small Concern, or Close Relatives thereof.

Debtor Licensee. "Debtor Licensee" means a Licensee which has Leverage from SBA.

Disadvantaged Concern. "Disadvantaged Concern" means a Small Concern owned by a person or persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Equity Securities means stock of any class in an incorporated Small Concern, or limited partnership interests in an unincorporated Small Concern or joint venture interests. Equity Securities redeemable in a manner other than provided in § 107.321 shall be considered Loans.

FFB Rate. FFB rate means the interest rate, as published from time to time in the Federal Register by SBA, for ten year debentures sold by Licensees to the Federal Financing Bank (FFB).

Financing. "Financing" or "Financed" means outstanding financial assistance provided to a Small Concern by a Licensee, whether through (a) loans, (b) guarantees, (c) equity investments, (d) commitments or (e) purchases of securities of a Small Concern through or from an underwriter. (see § 107.404).

Investment Adviser/Manager. "Investment Adviser/Manager" of a Licensee means any person who pursuant to written contract executed in accordance with the provisions of § 107.709 furnishes advice or assistance with respect to operations of a Licensee.

"Lending Institution" means a concern operating under regulations of a state or Federal licensing, supervising, or examining body and which holds itself out to the public as engaged in the making of commercial and industrial loans and whose lending operations are not for the purpose of financing its own or an Associate's sales or business operations.

Leverage. "Leverage" means financial assistance provided to a Licensee by SBA, either through the purchase or guaranty of debentures, or through the purchase of preferred securities (see §§ 107.201 to 107.205).

Licensee. "Licensee" means either a corporation ('Corporate Licensee'), or a limited partnership organized pursuant to § 107.4 ('Unincorporated Licensee'), to which a license has been granted pursuant to the Act. For section deeming 'Licensee' to include the corporate general partner of an Unincorporated Licensee, see § 107.4(b)(2).

Loan. "Loan" means a debt with no provision for the Licensee's acquisition of Equity Securities.

1940 Act Company. "1940 Act Company" means a Licensee which is registered under the Investment Company Act of 1940.

1980 Act Company. "1980 Act Company" means a Licensee which is registered under the Small Business Investment Incentive Act of 1980.

Person. "Person" means a natural person or legal entity.

Portfolio. "Portfolio" means the securities representing a Licensee's total outstanding Financing of Small Concerns. It does not include idle funds or assets in liquidation.

Portfolio concern. "Portfolio concern" means a Small Concern Assisted by a licensee.

Private capital. On and after (date of publication of this proposed rule), "Private Capital" means the combined private paid-in capital and paid-in surplus of a Corporate Licensee, or in the case of an Unincorporated Licensee, the partnership capital. Private Capital does not include preferred capital provided by SBA, or funds borrowed by a Licensee from any source. For Leverage purposes only, funds invested by any State, or by any subdivision or instrumentality of a State, or funds invested directly or indirectly by any Federal agency shall not be included in Private Capital, unless invested pursuant to a statute, such as 42 U.S.C. § 2985a which expressly requires that the funds so invested shall be included in Private Capital, *Provided,* That Community Development Block Grant funds invested in a Licensee pursuant to the Housing and Community Development Act of 1974, not later than [publication date of this proposed regulation] shall also be included in Private Capital for Leverage purposes."

Real estate investment. "Real Estate Investment" means a Licensee's financing of a Small Concern which is classified as a real estate concern under Industry Numbers 6531, 6541, and 6552 of the SIC Manual. For restriction governing Real Estate Investments, see §§ 107.101(c) and 107.901(c).

SBA. "SBA" means the Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

Section 301(d) Licensee. "Section 301(d) Licensee" means a Licensee organized under a State business or nonprofit corporation statute, or a limited partnership organized pursuant to § 107.4 and licensed pursuant to Section 301(d) of the Act, the investment policy of which is limited to making investments solely in small concerns which will contribute to a well balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Short-term financing. "Short-term financing" means Financing for a term of less than seven years in accordance with the regulations.

SIC Manual. "SIC Manual" means the latest issue of the Standard Industrial Classification Manual, prepared by the Office of Management and Budget, and available from the U.S. Government Printing Office.[4]

Small Concern. "Small Concern" means a small business concern as defined in section 103(5) of the Act (including affiliates as defined in § 121.3–2 of this chapter), which for purposes of size eligibility, meets the applicable criteria set forth in §121.3–11 of Part 121 of this chapter.

Unincorporated Licensee: see Licensee.

§ 107.4 Limited partnership SBIC

(a) *General.* A limited partnership organized under State law solely for the purpose of performing the functions and conducting the activities contemplated under the Act may apply for a license pursuant to section 301(c) or section 301(d) of the Act.

(b) *Application.* The following requirements shall apply to an application submitted by or on behalf of a limited partnership:

(1) *Number of General Partners.* Unless the applicant has a corporate general partner, it shall not have fewer than two individual general partners initially, and thereafter for not more than sixty days at any one time. Some or all of the general partners may be members of a separate partnership that serves as a general partner of such Licensee; but all general partners of such separate partnership shall be considered for all purposes to be general partners of the Unincorporated Licensee. A limited partnership may not serve as a general partner of an Unincorporated Licensee.

(2) *Corporate General Partner.* A corporate general partner shall be organized under State law solely for service as such and its Articles (which shall accompany the License

[4] As of the effective date of this proposed Revision 8 the latest issue of the SIC Manual was 1972.

Application) shall specify that no person shall serve as an officer or director without SBA's approval. No corporate general partner may serve as such for any other Licensee. The corporate capital of such general partner which is not invested in the Unincorporated Licensee shall be invested only as permitted by the last sentence of section 308(b) of the Act, pursuant to § 107.708 or in accordance with § 107.903(c), or any of them. A corporate general partner is subject to the same examination and reporting requirements as a Licensee under Section 310(b) of the Act. The restrictiona and obligations imposed upon a Licensee by §§ 107.203(b)(2) and (3)(iii) and by §§ 107.601, 107.603, 107.701, 107.702, 107.703, 107.708, 107.709, 107.801, 107.802, 107.803, 107.1001, 107.1002, and 107.1004 apply also to a corporate general partner of a Licensee.

(3) *Articles of Partnership.* The Articles shall be transmitted to SBA with the application and shall provide that (i) the partnership shall have a duration of not less than thirty years unless sooner dissolved by the partners; (ii) no general partner may be removed or replaced by the limited partners without prior written approval of SBA; and (iii) any transferee of, or successor in interest to, a general partner shall have only the rights and liabilities of a limited partner pending SBA's written approval of such transfer or succession.

(c) *Obligations of a Control Person.* All Control Persons are bound by the disciplinary provision of sections 313 and 314 of the Act and by the conflict-of-interest rules under section 312 of the Act. The term "Licensee," as used in § 107.1004 includes a Control Person of a Licensee. The term "Licensee" as used in § 107.1101 includes only a general partner. The events of default specified in §§ 107.203(b)(1)(ii), (iii) and (iv) and in § 107.203(b)(2) shall apply to all general partners; the events of default specified in § 107.203(b)(4) shall apply to all Control Persons. The events of default enumerated in the preceding sentence shall be deemed to have been agreed to be the Unincorporated Licensee.

(d) *Liability of general partner for partnership debts to SBA.* Subject to section 314 of the Act, the general partner of an Unincorporated Licensee shall not be liable solely by reason of its status as a general partner for repayment of any debts owed by the Licensee to SBA unless SBA, in the exercise of reasonable investment prudence, and with regard to the financial soundness of such Unincorporated Licensee, shall determine otherwise prior to the purchase or guaranty of such Unincorporated Licensee's debentures.

(e) *Reorganization of Corporate Licensee.* A Corporate Licensee wishing to reorganize as an Unincorporated Licensee, or an Unincorporated Licensee wishing to reorganize as a Corporate Licensee, may apply to SBA for approval pursuant to § 107.803 of these Regulations.

Operational Requirements

§ 107.101 Operational requirements.

All Licensees shall comply with the following requirements:

(a) *Management.* Each Licensee shall have and maintain qualified management (including management pursuant to § 107.709) in charge of its operations who will be available at its office to the public. A manager of a Licensee shall be deemed an officer.

(b) *Office.* The Licensee shall maintain a reasonably accessible office, which will display the license, and the name of the Licensee, have a listed telephone number, and be open to the public during regular business hours.

(c) *Diversified investment policy—real estate and motion pictures.* Unless specifically authorized in writing by SBA.

(1) *General rule.* No Licensee shall maintain more than one-third of its portfolio, as of the close of any full fiscal year, in: (i) Permitted real estate investments, or (ii) investments in Small Concerns engaged in motion picture production and distribution (classified under Industry Nos. 7813, 7814, 7823, and 7824 of the SIC Manual). For further provisions governing real estate investments, see § 107.901(c). For statement of general policy concerning motion picture specialist—Licensees, see 42 FR 60729, November 29, 1977.

(2) *Licensees other than real estate specialist.* Where a Licensee does not operate as an approved real estate specialist subject to paragraph (c)(3) of this section, its investments in Small Concerns classified under Major Groups 15, 65 and/or 70 of the SIC Manual shall not exceed one-third of its Portfolio in any one such Major Group, nor two-thirds for any combination of such Major Groups, as of the close of any full fiscal year.

(3) *Real estate specialists.* Where a Licensee maintains more than one-third of its Portfolio in Real Estate Investments pursuant to an investment policy approved by SBA, the total of its investments in Small Concerns classified under Major Group 15 (Building Construction—General Contractors and Operative Builders) and Major Group 70 (Hotels, Rooming Houses, Camps and Other Lodging Places) of the SIC Manual shall not exceed twenty percent of its Portfolio as of the close of any full fiscal year.

(4) *Prepayments.* Prepayments of outstanding Financing or similar events occurring beyond the control of the Licensee within the fiscal year shall be disregarded in determining whether the Licensee meets the foregoing requirements as of the close of its fiscal year.

(d) *Minimum Capital.* Every Licensee shall have:

(1) Private Capital of at least $1,000,000: *Provided, however,* That this $1,000,000 minimum capital requirement shall not apply with respect to any license application on file with SBA on the date of publication of this regulation in final form nor with respect to any license issued on the basis of such application. Licensees licensed on or after October 1, 1979 and before the effective date of this regulation shall have a Private Capital of at least $500,000; Licensees licensed prior to October 1, 1979 shall have a Private Capital of at least $150,000; and

(2) Taking additional resources into account, adequate capital to assure a reasonable prospect that it will be operated soundly and profitably, and managed actively and prudently in accordance with the Act and regulations.

(e) *Borrowed funds.* Persons owning directly or indirectly, beneficially or of record, an equity interest of ten or more percent of a Licensee's Private Capital may not use borrowed funds in purchasing such interest, unless the net worth of such person is at least twice the amount borrowed, or unless such person obtains SBA's prior written approval of a lesser ratio on the grounds that it is adequate in light of all the circumstances.

License

§ 107.102 License application.

The license application shall be submitted on SBA Form 415 together with a processing fee of $5,000 in accordance with accompanying instructions.

§ 107.103 Public notice.

SBA shall publish notice of the license application in the **Federal Register.** It shall include such appropriate information as the name and location of the proposed Corporate Licensee, its area of operation, the names and addresses of its officers, directors, and owners of, or persons controlling, 10 or more percent of its voting stock; and in the case of an Unincorporated Licensee,

its name, location, and area of operations, and the names and addresses of its Control Persons. If any Control Person is a corporation, the notice shall set forth the names and addresses of any officers, directors, and owners of, or persons controlling 10 percent or more of the stock of such corporation. In the case of an Unincorporated Licensee, the notice shall also include the name and address of each owner of 10 percent or more of the Licensee's Private Capital. The public shall be afforded reasonable opportunity for the submission of written comments. The proposed Licensee shall publish a similar notice in a newspaper of general circulation in the city or proposed area of operation, and shall furnish a certified copy to SBA within 10 days of the date of publication.

§ 107.104 Transferability of license.

A license shall not be transferred in any manner without SBA's prior written approval.

§ 107.105 Surrender of license.

A License shall not be surrendered without SBA's prior written approval. Request for approval shall be accompanied by an offer of immediate payment of all moneys owing to or guaranteed by SBA, or by a plan satisfactory to SBA for the orderly liquidation thereof. Upon receipt of Licensee's request, SBA may remove Licensee's name from published lists of Licensees, and may conduct an examination or investigation of its affairs pursuant to section 310 of the Act.

Borrowing by Licensee

§ 107.201 Funds to licensee.

(a) *Application procedure.*

(1) *Licensees other than section 301(d) Licensees.* A Licensee (other than a section 301(d) Licensee) may apply for Leverage pursuant to section 303(b) of the Act on SBA Form 1022 in accordance with accompanying instructions. Prior to the extension of any Leverage, an Unincorporated Licensee must furnish SBA with a ruling by the Internal Revenue Service that it qualifies as a partnership for tax purposes: *Provided, however,* That where a delay in obtaining an IRS ruling would cause a hardship to the Licensee, SBA may, pending receipt of such a ruling, make leverage funds available under interim financial arrangements which in SBA's judgement are satisfactory to protect SBA's creditor or guarantor position from an adverse IRS determination.

(2) *Section 301(d) Licensees.* A section 301(d) Licensee may apply for Leverage pursuant to section 303(c) of the Act [5] on SBA Form 1022A (for purchase of preferred securities and debentures), on SBA Form 1022B (for exchange of debentures for preferred securities), or on SBA Form 1022 (for guaranty of debentures) in accordance with accompanying instructions.

(b) *SBA guaranty.*

(1) SBA may in its discretion agree to guarantee a Licensee's debentures unconditionally, irrespective of the validity, regularity or enforceability of such debentures or any other circumstances which might constitute a legal or equitable discharge or defense of a guarantor and, pursuant to its guaranty, to make timely payments of principal and interest, irrespective of any default by the issuing Licensee or acceleration of the maturity thereof by SBA.

(2) Persons interested in providing funds to Licensees under such guaranty may notify SBA by letter, certifying whether such lender has a direct or indirect beneficial interest of ten or more percent of the actual or potential voting rights in any Licensee, or in any person directly or indirectly controlling, controlled by or under common control with, any Licensee. Such certification will not be required from lenders where the borrowing Licensees will be selected or approved by SBA or its agents. SBA will endeavor to match such offers with applications pursuant to paragraph (a) of this section but cannot assure that such offers will be accepted. SBA in its discretion may also arrange for public or private financings under its guaranty authority.

(3) No SBA guaranty shall be extended to a lender:

(i) Having a direct or indirect beneficial interest of ten or more percent in the Private Capital of the Licensee to be guaranteed, or in any person directly or indirectly controlling, controlled by, or under common control with, such Licensee; or

(ii) Having such interest involving another Licensee which has received or is about to receive pursuant to any understanding, arrangement, cross-dealing, reciprocal or circular arrangement any direct or indirect financing (or a commitment for financing) from another lender with SBA's guaranty. SBA may void any guaranty obtained in violation of this paragraph (b)(3), but the foregoing shall not apply to lenders whose borrowers are selected or approved by SBA or its agents.

[5] Section 303(c) of the Act authorizes SBA to purchase nonvoting preferred securities, and to purchase or guarantee debentures isued by Section 301(d) Licensees, which may be subordinated in accordance with Section 303(b) of the Act.

§ 107.202 Leverage in excess of three hundred percent.

(a) In order to qualify for Leverage exceeding three hundred percent of Private Capital, at least sixty-five percent of the Licensee's total funds available for investment must be invested (or committed) in Venture Capital Financing of Small Concerns: *Provided, however,* That section 301(d) Licensees shall have thirty percent so invested.

(b) "Venture Capital Financing" shall mean:

(1) Equity Securities as defined in § 107.3 with no repurchase requirement for five years, except as may be specifically approved by SBA under § 107.801 for purposes of relinquishing Control over a Small Concern.

(2) Any right to purchase Equity Securities.

(3) Debt Securities or Loans which are subordinated by their terms to all borrowings (as distinguished from all other debts and obligations) of the issuer, the definition in § 107.3 notwithstanding, and have no part amortized during the first five years.

(c) The term "total funds available for investment" shall mean ninety percent of the sum of total current assets and loans and investments on a cost basis net of current maturities. (Based on the Statement of Financial Position, "total current assets" is the aggregate of lines 14 through 23 and "loans and investments on a cost basis net of current maturities" is line 10, column 1 less line 11.) Venture capital investments shall be valued on the same basis as Licensee's assets comprising its "total funds available for investment". A Financing carried as "assets acquired in liquidation of portfolio securities" or "operating concerns acquired" which originally qualified as venture capital shall retain the venture capital qualification.

(d) The ratio prescribed by paragraph (a) of this section shall be maintained as of the end of each fiscal year: *Provided, however,* That prepayment of venture capital investments, raising additional private capital and additional Leverage recently provided shall be disregarded in determining whether the Licensee meets the foregoing requirements as of the close of its fiscal year. Failure to maintain the ratio prescribed by this section shall be a violation of these regulations.

§ 107.203 SBA purchase, sale, or guaranty of securities evidencing Leverage; events of default.

(a) SBA may, upon such conditions and for such consideration as it deems reasonable, sell, assign, transfer, or otherwise dispose of any preferred security, debenture, or other security held in connection with Leverage. In such event and upon notice thereof by SBA, Licensee will make all payments of principal and of dividends or interest as shall be directed by SBA. Licensee shall hold SBA harmless from all damage or loss which SBA may sustain by reason of such disposal, limited, however, to the extent of Licensee's liability under such security, plus court costs and reasonable attorney's fees incurred by SBA.

(b) A Licensee issuing debentures pursuant to section 303 (b) and (c) of the Act after May 2, 1972, or preferred securities after [date of publication of these proposed regulations], shall be deemed to have agreed to the following terms and conditions, as in effect at the time of such issuance and as if fully set forth in such debentures or preferred securities:

(1) Upon written notice by SBA, the entire indebtedness and/or the principal amount of preferred securities of the Licensee issued to, held or guaranteed by SBA may be declared immediately due and payable to SBA upon the happening of any one or more of the following events:

(i) Default in the payment of the principal or interest, under any debenture, note or obligation of the Licensee, issued to, held or guaranteed by SBA;

(ii) Nonperformance or violation by the Licensee, as determined by SBA, of any one or more of the terms and conditions of any loan, obligation or preferred security of the Licensee, issued to, held or guaranteed by SBA, or of any agreement with or conditions imposed by SBA;

(iii) Failure of the Licensee, as determined by SBA, to comply with any one or more of the provisions of the Act or regulations promulgated thereunder, as they may be amended from time to time;

(iv) Failure of the Licensee to notify SBA within twenty days from the date of an event of default or nonperformance by the Licensee under any debenture, note or indebtedness of the License issued to or held by anyone other than SBA.

(2) The entire indebtedness and principal amount of preferred securities of the Licensee issued to, held or guaranteed by SBA shall immediately become due and payable to SBA without notice, presentation or demand, whenever:

(i) Licensee is insolvent; or

(ii) Not having sufficient property to pay all of its debts, Licensee makes a voluntary assignment thereof; or

(iii) Licensee makes any transfer or incurs any obligation that is fraudulent under the terms of 11 U.S.C. 548.

(iv) A petition is filed in commencement of any bankruptcy or reorganization proceeding, receivership, dissolution or other similar creditors' rights proceeding, by or against the Licensee, whichever event shall first occur.

(3) Except with the prior written consent of SBA, Licensee shall not:

(i) Repurchase or retire any of its Private Capital, except as permitted by § 107.802; or

(ii) Make any distribution to its shareholders or partners other than periodic payments out of retained earnings based on the capital contributions of the recipent; or

(iii) Increase the aggregate amount of salaries or other compensation of officers, directors, or employees beyond the amount previously approved by SBA. In applying this provision, compensation to officers, directors, or employees of a wholly-owned corportation shall be deemed paid by the Licensee.

(4) Except with the prior written consent of SBA, Licensee will not employ or tender any offer of employment to, or retain for professional services, for a period of two years after the date of the latest debenture or preferred security issued by Licensee pursuant to section 303(b) and (c) of the Act (or any SBA assistance as defined in Part 105 of this chapter) any person who on or within one year prior to said date:

(i) Shall have served as an officer, attorney, agent, or employee of SBA; and

(ii) As such, shall have occupied a position or engaged in activities which SBA shall have determined involved discretion with respect to the granting of assistance under the Act.

(5) Any failure on the part of SBA at anytime to require the performance by Licensee of any one or more of the terms or provisions of any debt instrument or preferred security of Licensee issued to, held, or guaranteed by SBA shall in no way affect SBA's right thereafter to enforce the same, not shall the waiver by SBA of any term or provision of any debt instrument or preferred security of Licensee issued to, held, or guaranteed by ABA be taken or held to be a waiver of any succeeding breach of any such term or provision.

(6) If the Licensee fails to maintain either the capital requirement of the investment ratio requirement under section 303(b)(2) of the Act, and the regulations promulgated thereunder from time to time, then the aggregate amount to the outstanding indebtedness evidenced by any debt instruments or principal amount of preferred securities issued to, held, or guaranteed by SBA which exceeds the maximum amount permitted under section 303(b)(1) shall (subject to the provisions of § 107,202(d)), and upon written notice by SBA, be immediately due and payable to SBA. In the event of such acceleration of payment, SBA in its sole discretion shall determine which preferred securities or debenture instrument or instruments, or parts therefor, shall be subject thereto.

(7) The debentures hereafter issued by a Licensee pursuant to section 303(b) of the Act, and SBA's claims relating thereto, shall be subordinate to all other debts of the Licensee, but shall have priority over all ownership interest in the Licensee upon any dissolution, winding-up, liquidation or reorganization or the Licensee, unless such debentures provide otherwise.

(c) Paragraph (b) of this section shall be applicable to section 301(d) Licensees obtaining Leverage pursuant to section 303(c)(1) or (2) of the Act: *Provided, however,* That the capital and investment ratio requirements referred to in paragraph (b)(6) shall be those prescribed by section 303(c) of the Act and § 107.202(a) thereunder.

(d) In addition to the events of default set forth in paragraph (b) of this section, capital impairment occurring after November 7, 1973 (or, in the case of a section 301(d) Licensee, ninety days from [the effective date of these regulations]), shall also constitute an event of default if Licensee fails to give SBA prompt written notice as soon as it knows or should reasonably have know thereof, or if, following such notice, Licensee fails to cure the impairment within time limits set by SBA in writing. In either such event, SBA may, in its discretion, by written notice declare the entire principal amount of preferred securities and indebtedness of the Licensee, issued to, held or guranteed by SBA, immediately due and payable. Capital impairment shall be deemed to exist when the "undistributed realized earnings deficit" (lines 47 and 48 of the statement of financial position) of a section 301(d) Licensee exceeds seventy five percent, or that of any other Licensee exceeds fifty percent of Private Capital. Treasury stock shall be deducted from paid-in capital stock and paid-in surplus in determining Private

Capital. Where unrealized appreciation is not sufficient to offset unrealized depreciation on loans and investments, the resulting "unrealized loss on securities held" (line 46 of the statment of financial position) will be added to "undistributed realized earnings."

§ 107.204 Collection or compromise of SBA claims.

SBA may, upon such conditions and for such consideration as it deems reasonable, collect or compromise all claims relating to preferred securities or obligations held or guaranteed by SBA, and all legal or equitable rights accruing to it.

§ 107.205 Leverage for Section 301(d) Licensees.

(a) *General.* SBA may provide Leverage to any section 301(d) Licensee through the purchase or guaranty of debentures, or to a Section 301(d) Licensee organized as a corporation, through the purchase of nonvoting preferred stock (or nonvoting preferred securities other than stock, but only if applicable law precludes the issuance of nonvoting preferred stock) pursuant to application filed under § 107.201(a)(2).

(b) *Charter Requirements for Leveraging.* No Leverage will be extended to any section 301(d) Licensee unless the following matters are appropriately provided for in the Licensee's Articles:

(1) *Investment Policy.* Statement of Investment Policy in conformity with section 301(d) of the Act.

(2) *Prior SBA approval to amend articles.* The articles shall not be amended without SBA's prior written approval.

(3) *Additional requirements for nonvoting preferred securities Leverage.* No nonvoting preferred securities may be purchased by SBA from any corporate section 301(d) Licensee unless its articles makes appropriate provision for the following additional matters:

(i) *Payment of dividends to SBA.* Subject to the sound discretion of the board of directors, SBA shall be paid from retained earnings an annual three percent dividend on the par value of its preferred securities. Such dividends shall be payable before any amount shall be set aside for or paid to any other class of stock, and shall be preferred and cumulative, so that in the event SBA has received less than three percent in any fiscal year, such dividends shall be payable on a preferred basis from subsequent retained earnings without interest thereon. Before any declaration of dividends or any distribution (other than to SBA), all dividends accumulated and unpaid on preferred securities issued to SBA shall be paid.

(ii) *Redemption rights.* A section 301(d) Licensee shall be entitled at its option to redeem in whole or in part preferred securities purchased by SBA, on any dividend date (after giving SBA at least thirty days'written notice) by paying SBA the par value of such securities, but not less than $50,000 par value in any one transaction, and any dividends accumulated and unpaid to the date of redemption.

(iii) *Redemption, liquidation, or distribution of assets.* Before any redemption of securities not purchased by SBA, or liquidation in whole or in part, or any distribution of assets to other stockholders, SBA shall be paid any amounts due pursuant to paragraph (b)(3)(i) of this section, and the par value of its preferred securities: *Provided, however,* That such par value need not be paid to SBA before the distribution of ordinary dividends from retained earnings.

(c) *Sale of debentures to SBA.* Debentures purchased by SBA but not debentures guaranteed by SBA pursuant to section 303(c) of the Act, shall be entitled to a reduced interest rate determined according to Section 317 of the Act. Such debentures shall specify the interest rates prescribed by sections 317 and 303(b) of the Act, together with the dates between which each applies. With respect to payment of interest SBA shall have the same priority as applies to debentures purchased or guaranteed under section 303(b) of the Act.

(d) *Preferred Securities Leverage in Excess of 100 percent*—(1) *General.* Subject to the following restrictions, SBA is authorized to purchase preferred securities in amounts in excess of 100 percent of Private Capital, but not in excess of 200 percent of Private Capital:

(i) From any corporate section 301(d) Licensee licensed on or before October 13, 1971; or

(ii) From any corporate section 301(d) Licensee licensed after October 13, 1971, and having Private Capital of $500,000 or more. SBA has no authority to purchase preferred securities in excess of 100 percent of Private Capital from any corporate section 301(d) Licensee licensed after October 13, 1971, if the Private Capital of such Licensee is less than $500,000.

(2) *Qualified Investments.* In no event shall the amount of preferred securities purchased by SBA in excess of 100 percent of Private Capital exceed the amount of the Licensee's funds invested in, or legally committed to, qualified investments. As used herein, "qualified investments" means, subject to §§ 107.320 and 107.801, stock of any class (including preferred stock) or limited partnership interests in eligible small concerns, or shares of any eligible syndicate, business trust, joint stock company or association, mutual corporation, cooperative or other joint venture for profit; or unsecured debt instruments which are subordinated by their terms to all other borrowings (as distinguished from all other debts and obligations) of the issuer.

(3) *Maintenance of Qualified Investment Portfolio.* Any Licensee that has sold preferred securities to SBA in excess of 100 percent of its Private Capital shall maintain its portfolio of "qualified investments" at not less than the amount of such preferred securities. If, as of the end of its fiscal year, the amount of such Licensee's "qualified investments" is less than the amount required by this paragraph (d)(3) the Licensee shall be deemed in violation of these regulations unless Licensee redeems promptly such excess securities, or unless SBA shall authorize temporarily a lesser amount of "qualified investments."

(e) *Exchange of outstanding debentures for Preferred Stock.*

(1) Subject to the conditions applicable to the issuance of preferred securities to SBA, a section 301(d) Licensee may, in SBA's discretion, retire debentures against issuance of preferred securities to SBA. A section 301(d) Licensee proposing to exchange its outstanding debentures shall be required to pay SBA all unpaid interest accruing to the date of the exchange.

(2) Notwithstanding the provisions of the preceding paragraph, debentures purchased or guaranteed by SBA on the basis of funds not includible in Private Capital, as defined in § 107.3, may not be retired against issuance of preferred stock on or after [date of publication of proposed rule]. Such debentures, to the extent purchased or guaranteed by SBA on the basis of ineligible funds, shall be paid at maturity (not to exceed fifteen (15) years from the date of issuance) if necessary to an orderly liquidation thereof. (f) *State law.* SBA does not intend that provisions of this section not mandated by the Act shall supersede existing State law. Whenever a party claims that a conflict exists, it shall submit an opinion of independent counsel, citing authorities, for SBA's resolution of the issues involved.

Financing of Small Concerns (Loan and Debt Financing; Equity Capital Financing; Guarantees and Commitments)

General Provisions and Loans

§ 107.301 Financing term and amortization.

(a) *Minimum period of Financing.* Except as otherwise provided for in these regulations, Financings of Disadvantaged Concerns may be made for a minumum period of five years, the aggregate of such Financings for less than seven years not to exceed fifty percent of the Licensee's Portfolio at the end of any fiscal year, determined without regard to prepayments (or similar events beyond the Licensee's control) which occur during that fiscal year,[6] but all other Financings shall be for a minimum period of seven years. Voluntary prepayment shall be permitted at any tie, but a reasonable prepayment penalty may be agreed upon. Any other restriction on prepayment shall require SBA's prior written approval.

(b) *Maximum amortization.* Amortization during the first seven years (or during the first five years of an authorized Financing for at least five years) shall not be required at a rate exceeding an accumulated average based on the straight line method of amortization.[7]

§ 107.302 Loans and debt financing; cost of money.

Subject to lower ceilings prescribed by local law, cost of money on Loans and Debt Securities shall not exceed the following:

(a) *Loans.*

(1) If the current FFB Rate is 8 percent per annum or lower, cost of money shall not exceed 15 percent.

(2) If the current FFB Rate is in; excess of 8 percent per annum, cost of money shall not exceed the sum of the current FFB Rate plus 7 percentage points, but rounded off to the next lowest eighth of one percent.

(b) *Debt Securities.*

(1) If the current FFB Rate is 8 percent per annum or lower, cost of money shall not exceed 12 percent.

(2) If the current FFB Rate is in excess of 8 percent per annum, cost of money shall not exceed the sum of the current FFB Rate plus 4 percentage points, but rounded off to the next lowest eighth of one percent.

(3) Debt Securities must be subordinated by their terms to all borrowings of the Small Concern except borrowings from officers, directors and owners of the Small Concern, or Close Relatives thereof.

(c) *Ceiling on specific Financing.* The maximum Cost of Money on any specific Financing shall be determined with reference to the FFB Rate in effect at the time of first disbursement or when a legally binding commitment was issued ("current FFB Rate"). A fluctuating interest rate is nevertheless subject to the maximum Cost of Money limitation in effect at the time of commitment, or of first disbursement if no legally binding commitment was issued.

(d) *Applicability to existing Financings.* The maximum annual Cost of Money on any Financing made or committed before April 16, 1980 shall in no event exceed the lesser of 15 percent or any lower rate prescribed by local law.

(e) *Commitments.* All commitments for Financing are subject to the provisions of § 107.402.

§ 107.303 Overline limitation.

(a) *General.* Without written SBA approval, the aggregate amount of funds disbursed, or securities acquire (exclusive of write-down), and of commitments and guaranties issued for a Small Concern (including affiliated concerns as defined in § 121.3–2(a) of this Chapter) shall not exceed twenty percent of Licensee's Private Captial: *Provided, however,* That for section 301(d) Licensees the limitation shall be thirty percent.

(b) *Increased Limit.* For purposes of this section only, Private Capital may include the net unrealized gains of a Licensee represented by marketable securities and support an additional overline limitation ("increased limit") subject to the following conditions:

(1) "Marketable securities" means securities that are traded on a regulated stock exchange, or that are listed in the Automated Quotation System of the National Association of Securities Dealers (NASDAQ), or that have, at a minimum, at least three market makers as defined in Section 3(a)(38) of the Securities Exchange Act of 1934 (15 U.S.C. § 78c(a)(38)).

(2) Unrealized losses on marketable and unmarketable securities must be deducted from unrealized gains on marketable securities (net unrealized gains).

(3) Valuation of marketable securities shall be at the lowest bid price.

(4) Licensee must have positive retained earnings (undistributed net realized earnings less allowances for losses on loans and investments).

(5) At the time of the first use of this subsection, and thereafter as of the first business day of each calendar quarter as long as this subsection is relied upon, Licensee shall retain in its files copies of the NASDAQ listings (or the Wall Street Journal) or written quotations from the market makers quoting the marketable securities which support the increased limit.

(6) By availing itself of this subsection, Licensee agrees that, in the event the net realized gains show a reduction on the first business day of any calendar quarter and for at least thirty days thereafter, below seventy percent of the net unrealized gains, Licensee will (not later than ninety (90) days from such date) cause to be injected sufficient Private Capital to restore support for the increased limit or reduce the increased limit of its investments to a point at which no investment exceeds 20 percent of the sum of its Private Capital plus the remaining net unrealized appreciation represented by marketable securities.

(7) Failure to maintain or restore support for the increased limit or to reduce investments as required by paragraph (6) shall be a violation of these Regulations.

Example: On January 15, 1982 the Licensee documents net unrealized gains of $100,000. Licensee adds $100,000 to its Private Capital and increases its overline limitation accordingly. Licensee now makes one or more investments in reliance on this increased limit. Hereafter, on each subsequent first business day of April, July, October, and January, Licensee must document net realized gains of at least $100,000. On April 15, 1982 Licensee can document further net unrealized gains for an aggregate of $150,000 and invests pursuant to an increased limit of $30,000 (20 percent of $150,000). Following the first business day of April, 1983, Licensee documents net unrealized gains of only $120,000. All investments within the increased limit remain undiminished in the portfolio. Licensee is now required to cause to be injected sufficient cash into Private Capital before July 1, 1983, so that the sum of the remaining net unrealized gains and the added cash equals at least five times the increased limit of its largest investment. In the alternative, Licensee must reduce before July 1, 1983, its "overline" investments made in reliance on this subsection so that none will exceed 20 percent of Private Capital plus $24,000. Any further reduction of net unrealized gains will require additional proportionate injection of cash or reduction of investments.

§ 107.304 Size status and nondiscrimination.

No Assistance shall be provided unless: (1) The Licensee and the Small Concern have executed SBA Form 480, Size Status Declaration, including Licensee's determination that applicable

[6] For other short-term financing and amortization, see § 107.403(b)(1) and (2).

[7] *(Ibid.)*

size standards have been met, or SBA has determined at the request of the Licensee or such concern that the latter is a Small Concern: and (2) The Small Concern has certified on SBA Form 652–D that it will not illegally discriminate in its operations, employment practices or facilities as set forth in Part 113 of this chapter. Such forms shall be kept available for SBA's examination: *Provided, however,* That the foregoing shall not apply when the Licensee acquires the securities from an underwriter in the public offering. (see § 107.404), in which event the Licensee shall keep the prospectus showing the small size status of the issuer as part of its records for SBA's examination.

Equity Capital

§ 107.320 Equity securities.

(a) *Liability of Licensee.* A Licensee shall not become a general partner in any unincorporated concern, or otherwise become jointly or severally liable for the general obligations of an unincorporated Portfolio Concern, inadvertently or otherwise.

(b) *Options.* A Licensee may acquire options or warrants (including conversion rights) in a Portfolio Concern or in an affiliate of such concern, as defined in § 121.3–2(a) of this chapter. Such options or warrants shall expire not later than six years from the maturity of the Licensee's Financing. For exercise of options after the Portfolio Concern becomes large, see § 107.706.

§ 107.321 Redemption provisions.

Subject to the following restrictions, a Licensee may acquire Equity Securities, options or warrants on terms that may include redemption by the issuer (Put).

(a) No redemption shall be required for the first seven years.

(b) A reciprocal redemption right (call) shall be given to the issuer, the exercise of which may be conditioned upon a one year notice to the Licensee.

(c) The redemption price shall not exceed a price to be agreed upon not later than the date of the Licensee's first disbursement, equal to one of the following:

(1) Book value per share as of the date of redemption; or

(2) A multiple of net earnings or net operating income per share (not to exceed a multiple of six), over a representative period of time not less than eighteen months.

§ 107.322 Refinancing; first refusal on new indebtedness.

Whenever a Licensee purchases Equity Securities from a Small Concern, it may require it to:

(a) Refinance any or all of its outstanding indebtedness so that the Licensee is the only holder of any evidence of indebtedness of such concern, and;

(b) Agree not to incur any new indebtedness without Licensee's approval and affording it an opportunity to finance such new indebtedness: *Provided, however,* That the Licensee shall allow appropriate exceptions for open account or other short-term credit.

Guaranties and Commitments

§ 107.401 SBIC guaranty of loans.

(a) Subject to § 107.301(a) (Minimum Period of Financing), a Licensee may guarantee to any non-Associate creditor the monetary obligation of a Small Concern: *Provided, however,* That:

(1) No such guaranty shall be issued where Licensee would become subject to State regulation as an insurance, guaranty or surety business;

(2) No such guaranty may be issued except at the request of the Small Concern or where necessary to protect Licensee's existing investment;

(3) Any direct Financing plus the amount of the guaranties does not exceed the overline limits under § 107.303;

(4) The total financing cost to the Small Concern may not exceed the limits set by § 107.302;

(5) The total guaranties issued and outstanding for all Small Concerns shall not exceed one hundred percent of Private Capital.

(6) A Licensee may guarantee an Associate creditor on the same conditions pursuant to §107.903.

§107.402 Commitments.

(a) *General.* A Licensee is authorized to enter into a commitment to furnish Financing to a Small Concern. A reasonable commitment fee may be charged.

(b) *Repayment period as to funds advanced pursuant to Licensee's commitment.*

(1) Where a Licensee enters into a commitment to finance a Small Concern, disbursement to be made at the latter's request, it shall be lawful (notwithstanding the maturity provisions of §107.301(a)) to provide for repayment as follows:

(i) Funds advanced during the first two years of the commitment period shall become payable not less than seven years after date of the commitment; and

(ii) Funds subsequently advanced shall become payable not less than five years of the respective disbursement dates.

§107.403 Other permissible financing.

(a) *Authorization.* A Licensee may furnish Financing pursuant to paragraph (b) of this section, within the overline limits of §107.303, but the aggregate of all such Financing to any one or all Small Concerns shall not at any time exceed twenty percent of the Licensee's total adjusted assets. "Total adjusted assets" means total assets reduced by all outstanding Leverage provided by SBA and current liabilities.

(b) *Investments permitted.* Notwithstanding §§107.301(a) and (b) and 107.320, a Licensee may make the following investments in Small Concerns:

(1) *Short-term Financing.* Financing with a term of less than seven years when it constitutes interim financing in contemplation of long-term Financing of a Small Concern, the protection of prior investments or financing ownership change pursuant to §107.711. The maximum aggregate period for this short-term financing cannot exceed one year. This paragrah (b)(1) supplements the authority to make short-term investments in Disadvantaged Concerns under §107.301(a).

(2) *Amortization rate of forty percent per annum.* Financing with a minimum term of seven years amortized at a rate not exceeding forty percent per annum of the declining principal balance outstanding, except for the final year of the term.

(3) *Securities purchased from nonissuer.* Securities of a Small Concern purchased from a seller other than the issuer or his underwriter (see §107.404), when such acquisition constitutes a reasonable necessary part of the overall sound financing of such concern pursuant to the Act or when the securities are acquired to finance a change of ownership pursuant to §107.711. See also §107.304 regarding size status and nondiscrimination certification. See §107.404 for purchases of Equity Securities through or from an underwriter.

§107.404 Purchase of Securities through or from underwriter.

A Licensee may purchase securities issued by a Small Concern through or from an underwriter, within 90 days of the date a public offering is first lawfully made: *Provided, however,* That (a) such purchase may not be made at more than the original public offering price; (b) the underwriter certifies in writing whether it is an Associate of any Licensee, that the portion of the offering purchased by the Licensee represents only newly issued Securities, and that an amount equal to the amount paid by the

Licensee (less reasonable and customary underwriting and related charges permitted to be charged by the underwriter in connection with the Licensee's purchase) has been, or will be, paid to the small concern; (c) if the underwriter is an Associate of any Licensee, no fees or charges may be retained by such underwriter with respect to the portion of the offering purchased by any Licensee; and (d) Licensee maintains records available for SBA inspection showing relevant details of the transaction, including date, price, commissions, etc., paid, if any, and underwriter's certificate. See also §107.304 regarding size status and nondiscrimination certification.

Management Services

§107.501 Management services.

(a) *General.* Management services may be advisory only or may, subject to §107.801, include performance of any technical service relating to the financial, managment, administrative, or operating activity of a Small Concern. Services shall be deemed "advisory only" where the Small Concern is free to accept or reject the advice rendered.

(b) *Conditions.* (1) Where a Licensee directly or indirectly provides management services to a Small Concern and such services are advisory only, no SBA approval is required. The Licensee shall maintain a record or examination by SBA of the time spent and charges made for such services and such charges shall not exceed comparable charges by established professional non-Licensee consultants.

(2) Where a Licensee directly or indirectly provides management services to a Small Concern that is being Financed by it and such services are not advisory only, such services shall be performed pursuant to a written contract with such Small Concern and the contract shall be approved in advance by the board of directors or principals of the Small Concern and by SBA. Such contracts shall thereafter be approved annually by the board of directors or principals of the small Concern and the Licensee. In the event of a material change, the revised contract shall be approved in advance by the board of directors or principals of the Small Concern and SBA. A doubt regarding materiality of a change shall be resolved by submission to SBA. An agreement to perform such services for a Small Concern that is not being Financed by the Licensee shall not require such annual approval. Records shall be kept and charges made in accordance with paragraph (b)(1) of this section.

(3) Where an Associate of a Licensee provdes management services to a Small Concern that is being Financed by such Licensee and such services are advisory only, such advice shall be rendered pursuant to a written contract, and the contract shall be approved annually in advance by the board of directors or the principals of the Small Concern and by SBA. The Licensee shall maintain records of time spent and charges made in accordance with paragraph (b)(1) of this section. Such Services rendered to a Small Concern not being Financed by such Licensee are not subject to regulation by SBA until such time as Financing is provided.

(4) Where an Associate of a Licensee provides management services to a Small Concern that is being Financed by such Licensee and such services are not advisory only, such services shall be performed pursuant to a written contract, and the contract shall be approved in advance by the board of directors or the principals of the Small Concern and by SBA. Such contracts shall thereafter be approved annually by the board of directors or principals of the Small Concern and the Licensee. In the event of a material change, the revised contract shall be approved in advance by the board of directors or principals of the Small Concern and SBA. A doubt regarding materiality of a change shall be resolved by submission to SBA. Records shall be kept and charges made in accordance with paragraph (b)(1) of this section. Such services rendered to a Small Concern not being Financed by the Licensee are not subject to regulation by SBA until such time as Financing is provided.

(c) *Management Services subsidiary.* A Licensee may organize a corporation solely to provide management services. All of its stock shall be owned and held by such Licensee, and the Licensee shall be responsible for compliance by its subsidiary with the Act and regulations. The remuneration paid to officers, directors and employees of the subsidary of a Debtor Licensee, and any changes therein, shall be subject to SBA written approval. Reports submitted to SBA by the Licensee shall reflect consolidated figures for both corporations. The subsidiary shall maintain adequate records and make any separate reports required by SBA and it shall submit to SBA examination. Failure to do so shall be deemed non-compliance by the Licensee. Licensee's investments in and receivables from such subsidiary corporation shall not exceed 3 percent of the Licensee's Private Capital.

Control of Licensee

§ 107.601 Changes in ownership or Control of Licensee.

(a) *General.* Transfer of Control over a Licensee by any means whatsoever shall be subject to prior written approval of SBA.

(b) *Prior approval requirements.* Prior written approval of SBA shall be required in case of:

(1) A proposed transfer which would result in the beneficial ownership by any Person, or group of Persons acting in concert, of ten or more percent of any class of its stock or Partnership Capital; or

(2) Any proposed transfer which results in a change in Control over a Licensee.

(c) *Acts prohibited.* Without prior written approval of SBA, no such transaction shall be consummated and no officer, director, employee or other Person acting on the Licensee's behalf shall:

(1) Register on its books any transfer of shares to the proposed new owner (or owners); or

(2) Permit the proposed new owner (or owners) to exercise voting rights with respect to said shares or participate in any manner in the conduct of Licensee's affairs.

(d) *Terms used:*

(1) "Transfer," "stock transfer," or "transfer of shares" refers to the aggregate amount of shares which any Person or group of Persons acting in concert transfers or undertakes to transfer during any six month period.

(2) "Exercise of voting rights" with respect to shares of Licensee's capital stock shall include directly or indirectly procuring or voting any proxy, consent or authorization as to such voting rights at any shareholders' meeting.

(3) "Participation in the conduct of Licensee's affairs" shall include control over Licensee's corporate books, records, funds or other assets; participation directly or indirectly in any disposition thereof; or serving as an officer, director, partner, employee or agent of such Licensee.

(e) *Transferors' Liability.* SBA may in its discretion as a condition of a Licensee's Leverage, require the Control Person(s) to assume in writing personal liability for such Licensee's Leverage, effective only in the event of their direct or indirect participation in any violation of the requirements of this section applicable to transfers of Control, and terminable if SBA subsequently approves the transfer of Control and so notifies the transferor(s) in writing.

(f) *Application for approval.* Written application for prior SBA approval shall be promptly made by the Licensee and by other parties in interest, together with a processing fee of $5,000.

(g) *Public Notice.* SBA shall publish notice in the Federal Register concerning the application for approval of a proposed transfer of Control over a Licensee, including such appropriate information as the name and location of the Licensee and of the proposed transferees who will own ten or more percent of any class of its Private Capital. The notice shall provide an opportunity to submit written comments. A similar notice shall also be published in a newspaper of general circulation in the city or locality where the Licensee is or will be located (or conduct operations), and a certified copy shall be furnished to SBA within ten days.

(h) *Standards governing SBA approval.*

(1) SBA may, as a condition of approving a proposed transfer of Control, require an increase in Licensee's Private Capital.

(2) SBA may condition its approval on the assumption in writing by the new owners of contractual liability pursuant to paragraph (e) of this section, and such other requirements as SBA deems necessary.

(3) SBA approval shall be contingent upon full disclosure of the real parties in interest, the source of funds used, and other data requested by SBA.

(i) *Reporting transactions involving possible transfer of Control.*

The Licensee shall, upon obtaining knowledge thereof, promptly report to SBA the facts pertaining to any transaction or event which affords reasonable grounds for belief that a transfer of Control over such Licensee is likely to occur. If there is any doubt as to whether a particular transaction or event will result in a change of Control, such doubt shall be resolved in favor of reporting the facts of SBA.

§ 107.602 Common control.

Without prior written SBA approval, a Licensee shall not have an officer, director, manager, nor a Control person or a stockholder or partner owning or controlling directly or indirectly ten or more percent of its stock or ownership interest who at the same time is:

(a) An officer, director, manager of such Control Person, stockholder or partner of another Licensee; or

(b) An officer or director of any Person which directly or indirectly controls, or is controlled by, or is under common Control with, another Licensee: *Provided, however,* That officerships or directorships in, and management, ownership or Control of stock of, a section 301(d) Licensee shall be excepted from the foregoing provisions.

§ 107.603 Pledge of licensee's shares.

Whenever ten or more percent of a Licensee's Private Capital is pledged by any Person (or group of Persons acting in concert) as collateral for indebtedness, and such pledge does not involve any transfer for which prior approval is required under § 107.601, written notice of the terms of such transaction shall be furnished to SBA by the pledgor within thirty calendar days from the date of the pledge.

Lawful Operations

§ 107.701 Amendments to Act and regulations.

A Licensee shall be subject to all existing and future provisions of the Act and these regulations, including Parts 112, 113 and 116 of Title 13 of the Code of Federal Regulations.

§ 107.702 Other laws.

Each Licensee shall comply with all applicable State or Federal law.

§ 107.703 Operations under Act.

A Licensee shall engage only in the activities contemplated by the Act and and in no other activities.

§ 107.704 Identification as an SBIC.

Any written communications made by a Licensee, shall identify that Licensee as "a Federal Licensee under the Small Business Investment Act of 1958."

§ 107.705 Consideration for issuance of Licensee securities.

(a) *General.* A Licensee may issue its securities or other ownership interests, including stock options to management and employees, for:

(1) Cash;

(2) Director obligations of, or obligations guaranteed as to principal and interest by, the United States;

(3) Securities of which it is the issuer, in connection with a reclassification approved by SBA;

(4) Services previously rendered or to be rendered to the Licensee not to exceed the fair value thereof;

(5) Physical assets to be currently employed in Licensee's operation at the fair market value thereof;

(6) As a dividend; and

(7) In connection with a merger, consolidation, or reorganization approved by SBA: *Provided, however,* That any evidence of ownership interest issued as a part of Licensee's minimum capital pursuant to § 107.101(d) must be paid for in cash or securities permitted by the last sentence of section 308(b) of the Act; *And provided, further,* That a section 301(d) Licensee which has received Portfolio securities from a participant Licensee pursuant to § 107.712(c), may issue shares for such securities at their cost or fair market value, whichever is lower.

(b) *Stock options.* (1) Licensees may issue stock options. A 1940 Act Company or a 1980 Act Company may issue stock options as permitted under such Acts or orders issued thereunder.

(2) *Stock options not deemed compensation.* Stock options issued by any Licensee including a 1940 or 1980 Act company, shall be deemed not to constitute "compensation" for purposes of any requirement of prior written consent of SBA with respect to increases of salaries or other compensation beyond the amounts approved by SBA.

§ 107.706 Retention of investments.

A Licensee may retain its investment in a concern which qualified as small at the time of initial financing, but which subsequently became large. Securities received in connection with a portfolio concern's merger, consolidation, or affiliation with a large business may be retained until Licensee has recovered its investment plus a reasonable return thereon, and thereafter, so long as continued ownership does not interfere with the Financing of small concerns. Subject to § 107.303, additional financing may be provided only to the extent necessary (a) to honor a commitment made while the concern was small, or (b) to protect Licensee's original investment, or (c) to exercise stock options or other rights to purchase equity securities pursuant to such options or rights acquired as part of the initial Financing.

§ 107.707 Purchases of securities from another Licensee.

A Licensee may exchange with or purchase for cash from another Licensee Portfolio securities (or any interest therein): *Provided, however,* That: (a) Licensee shall not have at any time more than one-third of its total assets invested in such securities; and (b) the amount for which the selling Licensee may be contingently liable shall be included in its overline limit under § 107.303.

§ 107.708 Deposits and investments of idle funds.

Except as hereinafter set forth, all funds of a Licensee shall be deposited without delay in an account in a fianancial institution insured by the Federal Deposit Insurance Corporation (FDIC) or by the Federal Savings and Loan Insurance Corporation (FSLIC).

Funds of a Licensee not invested in Small Concerns and not reasonably needed for its day-to-day operations shall be invested in (a) direct obligations of, or obligations guaranteed as to principal and interest by, the United States the maturities of which do not exceed one year; or (b) in certificates of deposit maturing within one year or less, issued by an institution insured by the FDIC or FSLIC; or (c) deposited in a savings account subject to a withdrawal restriction not to exceed one year in any institution insured by the FDIC or FSLIC: *Provided, however,* That a Licensee may maintain a petty cash fund of up to $500.

§ 107.709 Investment Adiser/Manager.

(a) *General.* A Licensee may employ an Investment Adviser/Manager as defined in § 107.3, subject to the supervision of the Licensee's Board of Directors or general partner and shall furnish SBA with a copy of the contract for prior written approval. Services performed may include management and operating activities. The contract shall specify the services to be rendered to the Licensee and to Portfolio Concerns, and the basis for computation of compensation. Such contracts shall thereafter be approved annually by the board of directors or principals of the Licensee. In the event of a material change, the revised contract shall be approved in advance by the Licensee and SBA. A doubt regarding materiality of change shall be resolved by submission to SBA.

(b) Two or more Licensees may, with prior written SBA approval, employ the same Investment Adviser or Manager.

§ 107.710 Assets in liquidation.

(a) A Licensee shall dispose of assets acquired in total or partial liquidation of a Portfolio asset, within a reasonable period of time.

(b)(1) A Licensee may incur reasonably necessary expenditures for maintenance and preservation of such assets, and

(2) A Licensee may, subject to prior written SBA approval, incur reasonably necessary expenditures for improvements to render such assets saleable: *Provided, however,* That aggregate expenditures made pursuant to paragraphs (a) and (b) of this section plus Licensee's total investment attributable to such assets, shall not exceed its overline limit under § 107.303, except as specifically approved in writing by SBA.

(3) In addition to the amounts authorized by paragraphs (a) and (b) of this section, a Licensee may make the following required expenditures allocable to such assets in an aggregate amount which, together with its total investment attributable thereto, and its expenditures pursuant to paragraphs (a) and (b) of this section do not exceed 35 percent of its Private Capital, except as specifically approved in writing by SBA: Prior mortgage interest; principal payments; taxes and necessary insurance coverage.

(c) Application for SBA approval under paragraphs (b)(2) and (b)(3) of this section shall specify all expenses estimated to be necessary pending disposal of the assets.

§ 107.711 Financing changes of ownership.

A Licensee may finance a change of ownership in a Small Concern when in the reasonable judgement of the Licensee it will promote the sound development or preserve the existence of a Small Concern as such; or will assist in the creation of a Small Concern as a result of a corporate divestiture; or will facilitate ownership in a Disadvantaged Concern. For restrictions governing purchases from nonissuer, see § 107.403.

§ 107.712 Section 301(d) Licensee wholly or partly owned by Licensee companies.

A section 301(d) Licensee may be licensed to operate as the subsidiary of one or more Licensee companies (participant Licensee), with or without non-Licensee participation, subject to the following conditions:

(a) *Application.* In reviewing a license application, SBA will consider the effect on the participant Licensee of their capital contribution to the proposed section 301(d) Licensee.

(b) *Participant Licensees.* Each participant Licensee shall own at least twenty percent of the voting securities of the proposed section 301(d) Licensee, and such ownership shall constitute a presumption of active participation. Licensees proposing to own less than twenty percent of such voting securities may demonstrate to SBA's satisfaction that they will be active participants.

(c) *Capital contribution.* The capital contribution of a participant Licensee which is no part of the minimum capital ($1,000,000) of the section 301(d) Licensee, may (notwithstanding § 107.705(a)) be represented by securities of Small Concerns eligible for investment by a section 301(d) Licensee, at cost or fair market value, whichever is lower. Assumption by the proposed section 301(d) Licensee of any part of such participant Licensee's indebtedness held or guaranteed by SBA will not be permitted. A capital contribution shall, for purposes of the participant Licensee's Leverage be treated as a reduction of its capital, and shall not justify the retention of Leverage by such participant Licensee.

Restricted Activities

§ 107.801 Control of Small Concern.

(a) *General.* The Act does not contemplate that Licensees shall operate business enterprises or function as holding companines exercising control over such enterprises. Accordingly, neither a Licensee, nor a Licensee and its Associates, nor two or more Licensees may, except as hereinafter set forth, assume Control over a Small Concern pursuant to management agreements, voting trusts, majority representation on the board of directors, or otherwise.

(b) *Presumption of Control.* Control over a Small Concern will be presumed to exist whenever a Licensee or a Licensee and its Associates, or two or more Licensees, own or Control, directly or indirectly, voting securities equivalent to:

(1) Fifty percent or more of the outstanding voting securities, if held by less than fifty shareholders; or

(2) More than twenty-five percent or a block of twenty or more percent which is as large as or larger than the largest other outstanding block of such securities, if held by fifty or more shareholders.

(3) Potential ownership of voting securities through options or conversion privileges shall not be considered in determing whether a presumption of control exists. This presumption may be rebutted by evidence satisfactory to SBA.

(c) *Temporary Control permitted.* A Licensee may acquire temporary Control only where reasonably necessary for the protection of its investment.

(d) *Plan to relinquish Control.* A Licensee may assume Control pursuant to paragraph (c) of this section only if it has entered into a written plan, enforceable by the Small Concern or its shareholders, providing for relinquishment of Control within a reasonable period, not to exceed seven years without prior written SBA approval of any extension prior to the end of such period. Such plan shall recite the facts and circumstances necessitating Control for the protection of the Licensee's investment, shall expressly state that it is subject to SBA approval, that the parties consider the plan fair, and shall be filed with SBA and the Small Concern within thirty days after Control is acquired, subject to SBA's post approval as to form and

substance, including fairness and the necessity for Control as a condition for the continuation of the license and shall be deemed approved unless Licensee is otherwise notified within ninety days after its receipt by SBA. Where an approved plan later becomes inadequate, a revised plan shall be submitted for SBA's approval. SBA approval shall be contingent upon disclosure of all relevant facts and be subject to such conditions as SBA may prescribe.

(e) *Enforcement actions.* A divestiture plan shall not interfere with Licensee's enforcement of its legal rights against a Portfolio Concern. If the Licensee retains or acquires Control through enforcement action, it shall immediately notify SBA and submit within thirty days a divestiture plan pursuant to paragraph (d) of this section for SBA approval. Subject to § 107.904, such plan may be negotiated with parties other than the Small Concern or its owners.

(f) A Licensee which has assumed Control of a Small Concern may later provide additional Financing, without an exemption under § 107.903(b)(1), and shall within 30 days resubmit its divestiture plan for SBA approval only where the additional Financing requires significant changes in such SBA approved plan on file in order to effect divestiture of Control.

(g) *Control in excess of seven years.* SBA approval pursuant to paragraph (a) of this section for extension of Control in excess of seven years will only be granted if unique circumstances are demonstrated to SBA's satisfaction. Examples of such circumstances are (1) the former owners abandoned the Small Concern or became incapacitated; or (2) the only other available option is the extinction of the Small Concern as such.

§ 107.802 Voluntary capital decrease.

(a) Without prior written approval, a Licensee shall not voluntarily reduce its Private Capital except that a Licensee in any one fiscal year may purchase its own stock in an amount not exceeding two percent of its Private Capital: *Provided, however,* That the amount of such stock purchase may not reduce the Licensee's Private Capital below the minimum required by the Act nor cause the Licensee to retain excess leverage contrary to Section 303 of the Act.

§ 107.803 Mergers, consolidations, and reorganizations.

Without prior written SBA approval, a Licensee may not merge, consolidate or reorganize.

§ 107.804 Financing of farm land purchases.

Without prior written SBA approval, a Licensee shall not, after September 8, 1976, provide financing to a small concern for the acquisition of farm land. For purposes of this section, farm land shall mean land which is or is intended to be used for agricultural or forestry purposes, such as the production of food, fiber, or wood, or is so taxed or zoned.

Prohibitions

§ 107.901 Prohibited uses of funds.

No funds may be provided to a Small Concern:

(a) *Relending, reinvesting, etc.* For relending or reinvesting, if its primary business activity involves, directly or indirectly, providing funds to others, the purchase of debt obligations, factoring, or long-term leasing of equipment with no provision for maintenance or repair: *Provided, however,* That Venture Capital Financing (as defined in § 107.202(b)) of any Disadvantaged Concern engaged primarily in relending or reinvesting activities shall be permitted, except for banks and savings and loan associations not insured by agencies of the Federal Government, and agricultural credit companies. Without SBA's prior written approval, all financings pursuant to this proviso shall not exceed the Licensee's Private Capital as of the close of any full fiscal year.[8]

(b) *Financing Licensees.* Directly or indirectly, for purchasing stock in or otherwise providing capital for a Licensee, or to repay an indebtedness to accomplish such purpose.

(c) *Real estate.* (1) If the Small Concern is classified under Major Group 65 (Real Estate) of the SIC Manual except for:

(i) Subdividers and developers (other than cemetery subdividers and developers);

(ii) Title abstract companies; and

(iii) Agents, brokers and managers, or

(2) If the Financing will be used by a Small Concern eligible under paragraph (c)(1)(i) of this section to acquire realty or discharge an obligation relating to the prior acquisition of realty unless such realty is to be promptly and substantially improved for sale to others: *Provided, however,* That prompt improvement shall not be required where an adverse change of circumstances beyond the Small Concern's control makes leasing necessary, pending improvement or sale at the earliest feasible date. Realty acquired for sale which is promptly and substantially improved, may be leased pending sale at the earliest feasible date, where such adverse change makes immediate sale impracticable. Evidence of such adverse change shall be kept for SBA examination. Improvement shall, for the purposes of this paragraph, be deemed prompt and substantial if:

(i) An amount equal to fifty or more percent of the Financing is used for improvements; and

(ii) Such improvements are undertaken within one year from date of acquisition or date of Financing, whichever is later.

(d) *Public interest.* For purposes contrary to the public interest, including but not limited to activities which are in violation of law, or inconsistent with free competitive enterprise.

(e) *Foreign investment.* For use outside the United States: *Provided, however,* That a Licensee may provide funds to a domestic Small Concern;

(1) To acquire abroad materials and industrial property rights for a domestic operation; or

(2) For foreign branch operations or for transfer to a controlled foreign subsidiary, so long as the major portion of the assets and activities of such concern will remain within the United States.

(f) *Passive businesses.* If that concern is not engaged in a regular and continuous business operation.

(g) *Associated supplier.* If fifty or more percent of the funds (or funds of the Small Concern released by such financing) are used to purchase goods (other than capital goods) or services from a supplier which is an Associate of the Licensee: *Provided, however,* That in the case of a section 301(d) Licensee, such limit shall be seventy-five percent.

§ 107.902 Inactive licensees.

(a) The Act contemplates that a Licensee shall conduct active operations to meet the needs of Small Concerns. Accordingly, inactivity constitutes a violation of these regulations.

(b) A Licensee which on the close of any full fiscal year has more than twenty-five percent of its assets in idle funds (§ 107.708) is inactive if it has not, during the past eighteen months, provided Financing aggregating at least twenty percent of the average amount of its said idle funds.

§ 107.903 Conflicts of interest.

(a) *General.* Self-dealing to the prejudice of the Small Concern, or of a Corporate Licensee or its shareholders,

[8] 1940 Act Companies are reminded that sections 12(d) (2) and (3) of that Act impose additional restrictions on certain investments otherwise permitted by this § 107.901(a).

or, in the case of an Unincorporated Licensee, the partnership or its members, or of SBA, is prohibited.

(b) *Prohibitions.* Except where a writen exemption may be granted by SBA in special instances in furtherance of the purposes of the Act:

(1) A Licensee shall not, directly or indirectly, provide Financing to any of its Associates.

(2) A Licensee shall not, directly or indirectly, provide Financing to an Associate of another Licensee if an Associate of the first Licensee receives, has received, or is about receive (including receipt pursuant to any understanding, agreement, or cross-dealing, reciprocal or circular arrangement) any direct or indirect Financing or a commitment for Financing from such other Licensee or a third Licensee.

(3) No Licensee or any of its Associates shall directly or indirectly borrow money from:

(i) A concern Financed by such Licensee, or

(ii) An officer, director, or owner of ten or more percent equity interest in such concern; or

(iii) A close relative of such officer, director, or equity owner.

(4) No Licensee shall directly or indirectly provide Financing to discharge or to free other funds for use in discharging an obligation to an Associate of the Licensee: *Provided, however,* That the foregoing shall not apply to transactions by Associate Lending Institutions in the normal course of business involving lines of credit or short-term financing.

(5) No Licensee shall directly or indirectly Finance, except as permitted by § 107.901(g), the purchase of property from an Associate of the Licensee.

(c) *Joint Financing with Associate.* (1) A Licensee may provide Financing to a non-Associate also Financed by an Associate of such Licensee contemporaneously or within six months before or after the Licensee's financing, but only on terms not less favorable to the Licensee than to the Associate. Licensee shall retain written evidence of the entire transaction. Where the Associate's financing is of a different kind, the burden shall be on the Licensee to show that the terms of its Financing were at least as favorable as those of its Associate's financing: *Provided, however,* That the foregoing shall not apply to transactions by Associate Lending Institutions in the normal course of business involving lines of credit or short-term financing.

(2) The six months rule of paragraph (g) of the definition of "Associate of a Licensee" in § 107.3 shall not apply to an initial joint Financing pursuant to paragraph (c)(1) of this section.

(d) *Compensation to Associates.* Without the prior written approval of SBA and subject to any limitations or restrictions of Federal or State law governing conflicts of interest and fiduciary obligations, no Associate of a Licensee shall receive from a Small Concern, directly or indirectly, any compensation in connection with Assistance rendered by such Licensee or anything of value for procuring, attempting to procure, or influencing Licensee's action with respect thereto.

(e) *Public notice.* Before SBA grants an exemption under this section, the Licensee shall publish in a newspaper of general circulation in the locality most directly affected by the transaction, a notice prescribed by SBA, and furnish a certified copy to SBA within ten days; SBA shall publish a similar notice in the Federal Register.

(f) *Protection of investment.* Nothing contained in this section shall preclude a Licensee from designating an Associate to serve as an officer, director or in any other capacity in the management of a Portfolio Concern to protect its investment: *Provided, however,* That such Associate has no other direct or indirect financial interest that exceeds three percent of the Portfolio concern's net worth and has not served as an officer or director or in any other capacity in the management of such concern for more than thirty days prior to such Financing. This proviso may be waived by SBA's prior written approval. Remuneration or anything of value received by such Associate (excluding directors fees and expenses) from the Small Concern shall inure to the benefit of the Licensee. The Licensee shall identify the individual Associate so designated in its records pursuant to § 107.1002.

(g) *1940 and 1980 Act Companies.* A 1940 and 1980 Act Company which has been granted an exemption by the Securities and Exchange Commission with regard to a transaction described in this section shall be exempt therefrom: *Provided, however,* That the Licensee shall promptly notify SBA and publish notice thereof pursuant to paragraph (e) of this section.

§ 107.904 Disposition of assets to licensee's associates or to competitors of portfolio concern.

(a) Except with a written exemption from SBA in special instances, a Licensee shall not dispose of assets (including assets in liquidation) to any Associate. As a prerequisite to such exemption, the Licensee must demonstrate that the proposed terms of disposal are no less favorable to it than are obtainable elsewhere.

(b) Except with written approval of the Portfolio concern which is not Controlled by the Licensee, or of SBA, a Licensee shall not dispose of Portfolio securities to a competitor of such concern. The particulars of any such disposal shall be promptly reported to SBA.

§ 107.905 No government sponsorship.

No Licensee shall represent or imply in any manner that any evidence of ownership interest issued or obligation incurred by it has been approved by the United States, or any agency or officer thereof, and a statement to such effect shall be included in any solicitations to investors.

§ 107.906 Violations based on false filings and nonperformance of agreements with SBA.

The following shall constitute a violation of these regulations:

(a) Nonperformance of any of the requirements of any debenture, preferred security, issued to or guaranteed by SBA, or any written agreement with SBA.

(b) Any false statement knowingly made, or misrepresentation or failure to state a material fact necessary in order to make a statement not misleading in the light of the circumstances under which the statement was made, in any document submitted to SBA.

Examinations, Accounts, Records and Reports

§ 107.1001 Examination fees.

(a) *General.* Examination fees will be assessed for annual examinations made in accordance with the Act. As a general rule, SBA will not assess examination fees for special examinations to obtain specific information.

(b) *Rates.* The fee structure provides rates based on the License's assets as of the date of the latest certified financial statement submitted to SBA before the examination. The rate table is as follows:

Total assets of licensee	Base rate	Percent of assets
$500,000 or less	$800 +	0.
$500,001 to $1,000,000	800 +	0.0.12 over $500,000.
$1,000,001 to $3,000,000.	1,400 +	0.030 over $1,000,000.
$3,000,001 to $5,000,000.	2,000 +	0.016 over $3,000,000.
Over $5,000,001	2,320 +	0.006 over $5,000,000.

For example, a Licensee with total assets of $2,000,000 would pay an examination fee of $1,700 ($1,400 + 0.030% of $1,000,000).

(c) *Users Fee.* Whenever the length of time required for an examination is excessive because of a lack of cooperation by the Licensee or because of the condition of the Licensee's records, in the judgment of SBA an additional fee, not to exceed $250 per day for such time, may be assessed.

§ 107.1002 Records and reports.

(a) *Records.* Current financial records including books of account are to be maintained in all material respects in accordance with SBA's system of Account Classifications. All financial records, and minutes of meetings of stockholders, directors, executive committees, or other officials including partners of an Unincoroporated Licensee, and all documents and supporting material relating to Licensee's transactions shall be kept at its principal office: *Provided, however,* That Portfolio items held by a custodian pursuant to written agreement shall be excepted from this requirement. All financial reports furnished to SBA shall make complete disclosure of all matters relevant to the Act and regulations.

(b) *Preservation of records.* Each Licensee shall preserve, for the periods hereinafter specified and in a manner that permits the immediate location of any record, such documents which are the basis for financial statements required by paragraph (e) of this section, and of the accompanying independent public accountant's certificate. Each Licensee shall:

(1) Preserve permanently:

(i) All general and subsidiary ledgers (or other records) reflecting assets and valuation, liability, capital stock and surplus, income, and expense accounts;

(ii) All general and special journals (or other records forming the basis for entries in such ledgers); and

(iii) The Articles, bylaws, license application, and all minute books, certificates evidencing ownership or stubs relating thereto, ownership ledgers and ownership transfer registers, such documents to be kept readily accessible for the first two years.

(2) Preserve for a period of at least six years following final disposition of the related loan or investment, all applications for Financing; size status declarations; lending, participation, and escrow agreements; Financing instruments; capital stock certificates and warrants of Small Concerns not surrendered or exercised; and all other documents and supporting materials relating to such loan or investment, including correspondence, such documents to be kept readily accessible for the first two years.

(3) Preserve for a period of at least six years all vouchers, checkbooks, bank statements, canceled checks, cash reconciliations, ledger trial balances, memoranda, correspondence, and other documents forming the initial accounting data for entry in, or underlying records in support of, the records enumerated in paragraph (b)(1) of this section.

(4) Notwithstanding the provisions of paragraphs (b)(1) through (3) of this section, a micro-reproduction of any records may be substituted for the original and preserved for the required time in the required manner: *Provided, however,* That Licensee shall:

(i) Cause a duplicate micro-reproduction to be made on a current basis and stored separately from the original microreproduction for the time required:

(ii) At all times have available facilities for easily readable projection and the production of easily readable facsimile enlargements.

(c) *Reports to owners.* At the time any report (including any prospectus, letter, or other publication concerning the financial operations of the Licensee or any of its Portfolio Concerns) is furnished to investors, the Licensee shall file three copies with the Investment division, SBA.

(d) *Documents filed with SEC.* Whenever a Licensee files any report, application or document with the Securities and Exchange Commission, it shall concurrently provide SBA with a copy thereof.

(e) *Filing of SBA Form 468.* Each Licensee shall submit to SBA, at the end of each fiscal year, a report containing financial statements for the fiscal year (Part I of SBA Form 468) as well as management information (Part II of SBA Form 468.) When requested by SBA, interim reports may be required, i.e., financial statements and/or management information. The reports are to be prepared in accordance with Appendix B, Guide for the Preparation of the Annual Report, SBA Form 468, which is equally applicable to interim reports, and shall be filed on the prescribed form, in triplicate, with the Investment Division, SBA, on or before the last day of the month immediately following the end of the reporting period (in the case of interim reports), and on or before the last day of the third month following the end of the reporting period (in the case of the Annual Report). The financial statements contained in the Annual Report will be examined by the Licensee's independent public accountant in accordance with Appendix A, Audit Guide for Small Business Investment Companies. The 1940 and 1980 Act Companies should refer to the rules of the Securities and Exchange Commission for the reports to be filed with SEC.

(f) *Litigation reports.* When a Licensee becomes a party to litigation or other proceedings, including any action by the Licensee, or by a security holder thereof in a personal or derivative capacity, against an officer, director, Investment Adviser or other Associate of such Licensee for alleged breach of official duty, it shall within thirty days file a report with SBA describing the proceedings, identity of and Licensee's relationship to other parties involved and, upon request, submit copies of the pleadings and other documents specified by SBA. Where such proceedings have been terminated by settlement or final judgment, the Licensee shall promptly advise SBA of the terms thereof. This paragraph shall not apply to collection actions or proceedings in enforcement of Licensee's ordinary creditors' rights.

(g) *Other reports.* Each Licensee shall file with the Investment Division, SBA, such other reports as SBA shall require by written directive.

§ 107.1003 Internal control.

(a) *General.* Each Licensee shall adopt a plan designed to safeguard its assets and monitor the reliability of its financial data, personnel, Portfolio, funds, and equipment.

(b) *Dual control, Bonding.* (1) Licensees shall maintain dual control over disbursements of funds and withdrawal of securities. Disbursements shall be made only by checks requiring two or more signatures or wire transfer authorized by two or more signatures. In the case of a Corporate Licensee, the signature of two or more officers shall be required. In the case of an Unincorporated Licensee, disbursements shall require the signature of two or more general partners, or two or more officers of a corporate general partner. Notwithstanding the foregoing requirement, checks in the amount of $1,000 or less may be signed by one officer of a Corporate Licensee or by one general partner of a Licensee. Two or more officers of a corporate Licensee, or one officer and one employee shall be required to open safe deposit boxes or withdraw securities from safekeeping. Two or more General Partners, or two or

more officers, or one officer and one employee of a Corporate General partner shall be required to open safe deposit boxes or withdraw securities from safekeeping: *Provided, however,* That an employee of the Licensee may be substituted for any of the persons described in this sentence. Licensees shall furnish to each depository bank and custodian a certified copy of its resolution or other formal act implementing the foregoing control procedures.

(2) In lieu of or in addition to the above, Licensees may maintain a Brokers Blanket Bond, Standard Form No. 14 or finance companies Blanket Bond, Standard Form 15, or such other form of coverage as SBA may approve, in a minimum amount of $25,000, executed by a surety holding a certificate of authority from the Secretary of Treasury pursuant to 6 U.S.C. Section 6–13. Each Person who has control over or access to cash, securities or other property of the Licensee shall be covered by such bond. The bond shall contain minimum coverage equivalent to insuring agreements (i) Fidelity, (ii) On premises and (iii) In Transit provided in Finance companies Blanket Bond Standard Forms 15 and 14. The bond shall also contain a rider or endorsement providing that the surety notify the SBA Investment Division of its intent to cancel the bond at least 30 days in advance of the effective date of cancellation.

§ 107.1004 Reporting changes not subject to SBA approval.

(a) *Changes to be reported.* Any change of Licensee's name, address, telephone number, officers, directors or other participants in the management of a Licensee, Articles, operating area, investment policy, or increase in capitalization not otherwise required to be reported (see, for example § 107.601) shall be reported to SBA not later than thirty days after these events. All changes shall be subject to SBA post-approval as a condition for the continuance of the license.

(b) *SBA approval.* Reports and requests filed pursuant hereto shall be deemed approved unless Licensee is notified to the contrary by SBA within ninety days after receipt thereof. Approval shall be contingent upon full disclosure of all relevant facts, subject to any conditions SBA may prescribe.

Compliance

§107.1101 Exemption from civil penalty.

Where it is impracticable to submit any required report within the prescribed time, the Licensee may, before such time has expired, promptly file an application which:

(a) Identifies such report;

(b) Certifies to an extraordinary occurrence not within the Licensee's control which makes timely submission of such report impracticable; and

(c) Is accompanied by written evidence.

SBA may thereupon exempt the Licensee from the civil penalty provision of section 315(a) of the Act, in such manner and upon such conditions as SBA determines.

Exemptions

§107.1201 Exemptions.

A licensee may file an application in writing with SBA to have a proposed action, which is subject to any procedural or substantive requirement, restriction, or prohibition specified under this Part, exempted from provisions thereof. SBA may approve such application and grant an exemption, conditionally or unconditionally, to the extent that such exemption from the requirement, restriction, or prohibition would not be contrary to the purposes of the Act. Such application must be accompanied by supporting evidence which demonstrates to SBA's satisfaction that:

(a) The proposed action is fair and equitable; and

(b) The exemption requested is reasonably calculated to advance the best interests of the SBIC program in a manner consonant with the policy objectives of the Act and regulations.

§ 107.1202 Savings clause.

The legality of transctions consummated pursuant to provisions of these regulations in effect at that time shall be governed thereby, notwithstanding subsequent changes. Nothing herein shall bar SBA enforcement action with respect to any transaction consummated in violation of provisions applicable at the time, but no longer in effect.

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(Catalogue of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: July 26, 1982.

James C. Sanders,

Administrator.

[FR Doc. 82-22247 Filed 8-13-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 81-GL-8-AD]

Airworthiness Directives; Wood Electric Corporation Series 107, 108, and 2100 Circuit Breakers Installed in, but Not Limited to, Boeing Model 707/720/727/737 Series Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Withdrawal of Notice of Proposed Rulemaking.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) applicable to Docket No. 81-GL-8-AD. This NPRM proposed to adopt an Airworthiness Directive (AD) that would require the testing and replacement, as necessary, of all Wood Electric Corporation Series 107, 108, and 2100 single phase circuit breakers. Subsequent to the issuance of this notice, additional information has been acquired which indicates the proposed action is no longer necessary. Accordingly, the NPRM is hereby withdrawn.

DATES: Not applicable.

FOR FURTHER INFORMATION CONTACT: Charles Smalley, Systems and Equipment Branch, ACE-130C, Chicago Aircraft Certification Office, FAA, Central Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694-7126.

SUPPLEMENTARY INFORMATION: An NPRM applicable to Wood Electric circuit breakers was published in the **Federal Register** on Thursday, August 6, 1981 (46 FR 40031, 40032). The Notice was issued because there had been a report of damage done to a Boeing Model 727 airplane when a Wood Electric Corporation Series 108 circuit breaker failed to trip under an electrical overload caused by a short circuit in a passenger service unit. This resulted in overheating and damage to wiring in that unit. The NPRM proposed to adopt an AD that would require the testing and replacement, as necessary, of all Wood Electric Corporation Series 107, 108, and 2100 single phase circuit breakers.

Interested persons were afforded an opportunity to comment on the proposed AD.

Comments received from interested parties indicated opposition to proceeding with the adoption of the proposal. Some commenters stated that a total of 12 reported incidents of the

breakers failing to operate in a period from 1971 to 1979 with over 500,000 being installed did not justify the issuance of an AD.

They also stated that repetitive circuit breaker testing was not effective in that the testing itself had a tendency to introduce failures into the system. In addition, replacement of all Wood circuit breakers would introduce new faults caused by disturbance of the wires and because some new breakers will experience infant mortality failures.

A recommendation was made that a test program similar to a test accomplished on Klixon breakers in 1971, be conducted using Wood Circuit Breakers that had not been previously tested. This test program was conducted by the Airline Transport Association (ATA) and the results submitted to the FAA.

The results established that far fewer circuit breakers would fail to protect the wire than originally assumed. The lower probability that a breaker would fail to protect the wire as proven by the test program, combined with the risk of introducing faults or defects in the airplane's electrical system when complying with the proposed AD, results in the conclusion that issuance of this AD could have a negative impact on safety.

In view of the comments and factors cited above the FAA has determined that the proposed action is unnecessary and the NPRM is being withdrawn. The withdrawal of this Notice does not preclude the FAA from issuing similar notices in the future, nor does it commit the FAA to any course of action.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Withdrawal

For the reasons stated above, Notice of Proposed Rulemaking, Docket No. 81–GL–8–AD published in the **Federal Register** on August 6, 1981 (46 FR 40031, 40032) is hereby withdrawn.

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

Note.—This withdrawal cancels a proposed rule which is no longer considered necessary in the interest of air safety. For this reason, and as discussed in the preamble, the FAA has determined that it: (1) Involves withdrawal of a proposed regulation which is not a major rule under Executive Order 12291 and (2) is not significant pursuant to Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this withdrawal will not have a significant economic impact on a substantial number of small entities. A draft regulatory evaluation has been prepared and has been placed in the public docket covering the proposed rule.

Issued in Kansas City, Missouri, on July 30, 1982.

Murray E. Smith,

Director, Central Region.

[FR Doc. 82–21956 Filed 8–13–82; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 82–ANM–9]

Proposed Transition Area, Kremmling, Colorado

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This notice proposes to establish a 700 foot transition area to provide controlled airspace for aircraft executing a new VOR/DME instrument approach to Kremmling Airport, Kremmling, Colorado. The intended effect of this action is to ensure segregation of aircraft using approach procedures in instrument weather conditions and other aircraft operating in visual weather conditions.

DATE: Comments must be received before September 27, 1982.

ADDRESSES: Send comments to: Manager, Airspace & Procedures Branch, ANM–530, Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

The official docket may be examined in the Regional Counsel Office (and an informal docket may be examined in the Airspace & Procedures Office) at the same address. For further information contact Ted Melland, Airspace & Procedures Specialist, ANM–533. The telephone number is (206) 433–1640.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted 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–ANM–9." The postcard will be date/time stamped and returned to the commenter. All communications received before September 27, 1982, will be considered 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 for examination by interested persons.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking by submitting a request to the Airspace & Procedures Office at the address previously listed. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) because development of a VOR/DME approach procedure requires a transition area 700 feet above ground level to contain the new procedure within controlled airspace.

List of Subjects in 14 CFR Part 71

Transition areas/aviation safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing the following transition area:

Kremmling, Colorado (New)

That airspace extending upward from 700 feet above the surface within an 11.5 mile radius of the Kremmling Airport (latitude 40°03'13"N, Longitude 106°22'06"W) and 11.5 miles each side of the Kremmling Airport 215° bearing extending from the 11.5 mile radius to 24 miles southwest of the airport excluding the Eagle, Colorado Transition Area.

(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)];] [Sec. 11.65 of the Federal Aviation Regulations (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, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (14 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 Seattle, Washington, August 5, 1982.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 82-21960 Filed 8-13-82; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 320

[Procedural Reg. Docket 40891; PDR-79A]

Procedures for Awarding Japanese Charter Authorizations

Dated: August 13, 1982.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB extends the comment period, to allow reply comments, in its rulemaking to set procedures for allocating the first year's authorized charter flights to Japan under a recent negotiated agreement. The comment period is extended 6 days at the request of the Department of Transportation.

DATES: Comments by: August 18, 1982.

Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments should be sent to Docket 40891, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Richard B. Dyson, Associate General Counsel, Rules & Legislation, or Joseph A. Brooks, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; (202) 673-5442.

SUPPLEMENTARY INFORMATION: By notice of proposed rulemaking (PDR-79, 47 FR 33981, August 5, 1982), the Board proposed rules that would set procedures for allocating certain charter flights to Japan. Allocation is necessary because of a recently negotiated agreement allowing U.S. and Japanese airlines to perform 300 one-way charter flights between the two countries each year.

At the request of the Department of Transportation, the Board is extending the comment period, to allow reply comments, from August 12 to August 18, 1982. These charter flights are the result of extensive negotiations between the Governments of the United States and Japan in which DOT was a major participant. Further, this issue involves important foreign policy issues and concerns, which require that views from DOT and others on this matter be considered by the Board.

For those reasons, there is good cause to extend the comment period from August 12 until August 18, to allow reply comments. Although the Board is expediting this proceeding, it is important to have benefit of reply comments from DOT and others on this important proceeding.

Accordingly, under authority delegated by the Board in 14 CFR 385.20(d), good cause is found to extend the time for filing comments for 6 days, to allow filing of reply comments.

Regulatory Flexibility Act

The statement required by the Regulatory Flexibility Act (Pub. L. 96-354) about the effect of the proposed rules on small business remains the same as set forth in PDR-79.

List of Subjects in 14 CFR Part 320

Charter flights, Reporting requirements, Treaties.

(Secs. 204, 401, 407, 1102, Pub. L. 85-726, as amended, 72 Stat. 743, 754, 766, 797; 49 U.S.C. 1324, 1371, 1377, 1502)

By the Civil Aeronautics Board.

Richard B. Dyson,

Associate General Counsel, Rules & Legislation.

[FR Doc. 82-22478 Filed 8-13-82; 12:16 pm]

BILLING CODE 6320-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 811 0152]

Association of Independent Dentists; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a Colorado dental association to cease, among other things, inhibiting competition by restricting or advising member dentists against the truthful advertising of their services. The order would bar the association and its members from coercing any third-party payer into altering the terms and conditions of any dental health care plan. Further, the association would be required to timely repeal any provision of its by-laws which are inconsistent with the prohibitions contained in the order; mail a copy of the order together with a letter specifying the changes made to the by-laws to every member; and provide all future members with a copy of the order.

DATE: Comments must be received on or before October 15, 1982.

ADDRESS: Comments should be directed to: Office of the Secretary, Federal Trade Commission, 6th St. and Pa. Ave. NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/CS-8, Arthur Lerner, Washington, D.C. 20580, (202) 724-1303.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's rules of practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explantion thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Dentists, Dental health care services.

In the matter of Association of Independent Dentists, a corporation, File No. 811 0152 agreement containing consent order to cease and desist.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Association of Independent Dentists (AID), a corporation, and it now appearing that AID is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between AID, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. AID is a corporation organized, existing and doing business under and by virtue of the laws of the State of Colorado, with its

mailing address at P.O. Box 1924, Pueblo, Colorado, 81002.

2. AID admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. AID waives: (a) any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify AID, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by AID that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to AID, (1) Issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to AID's address as stated in this agreement shall constitute service. AID waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. AID has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. AID further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

8. The parties understand that the Commission's decision in *American Medical Association*, 94 F.T.C. 701 (1980) (hereinafter "*AMA*") is presently before the United States Supreme Court on writ of certiorari, and that one of the questions presented to the Supreme Court in *AMA* is whether the Commission properly determined the American Medical Association and respondent constituent state and county medical societies to be "corporations" as that term is defined in Section 4 of the Federal Trade Commission Act. It is agreed that in the event the Supreme Court finds that the Commission did not properly determine the *AMA* respondents to be "corporations," and the Commission thereafter issues a Final Order dismissing the complaint in *AMA* on the ground that the respondents are not "corporations," then the Commission shall dismiss the complaint in this proceeding, without prejudice, and withdraw this consent agreement and order. As used herein, the term "Final Order" means an order or opinion of the Federal Trade Commission which becomes final in accordance with Section 5(g)–(k) of the Federal Trade Commission Act (15 U.S.C. 45 (g)–(k)).

Order

I

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

A. "AID" means respondent Association of Independent Dentists, its directors, officers, committees, agents, employees, successors and assigns;

B. "Third-party payer" means any person, partnership, corporation, government agency or other entity which agrees to pay for or reimburse, or administer payment or reimbursement of, all or part of any expense for dental services incurred by another person or group of persons;

C. "Reimbursement" means money paid by a third-party payer for dental services.

II

It is ordered that AID shall cease and desist from:

A. Restricting, regulating, interfering with, or advising against the advertising or publishing by any person or organization of information about dental services offered by that person or organization, or the manner in which such information is advertised or published; or

B. Making any express or implied threat of acts to be taken by AID of by AID members acting in concert with AID, or engaging in any other acts, with the purpose or effect of coercing, compelling, or inducing any third-party payer to accept a position taken by AID, or AID members acting in concert with AID, concerning the amount, manner of calculating, or terms of reimbursement.

III

It is further ordered that AID shall:

A. Within thirty (30) days after service upon AID of this order, repeal any provision of its by-laws which is inconsistent with the provision of Part II of this order;

B. Within forty (40) days after service upon AID of this order, mail a copy of this order, and a letter specifying the changes to AID by-laws made pursuant to Paragraph A of this Part, to every AID member;

C. Within sixty (60) days after service upon AID of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which AID has complied with this order; and

D. Provide a copy of this order to each new AID member when the member is accepted into membership.

IV

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

Association of Independent Dentists, Docket No. 811–0152

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Association of Independent Dentists ("AID").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

A complaint prepared for issuance by the Commission along with the proposed order alleges that AID has acted as a combination of at least some of its members or has conspired with at least some of its membes to restrain competition among dentists in Pueblo County, Colorado, by restricting members' truthful advertising of their services to the public and by increasing or maintaining the level of reimbursement paid for dentists' services by third-party payers. These activities are alleged to be unfair methods of competition or unfair or deceptive acts or practices in violation of Section 5 of the Federal Trade Commission Act.

According to the complaint, AID is a professional association of dentists in Pueblo County, Colorado, formed to preserve and promote members' private dental practices. The complaint asserts that AID is not affiliated with any other dental society or professional association and that, except to the extent that competition has been restrained as alleged in the complaint, AID members have been and are now in competition among themselves and with other dentists. The complaint further asserts that some of the fees which AID members

charge for their services are reimbursed by third-party payers, which pay for or administer the payment of dental expenses incurred by their subscribers.

The complaint alleges that, in furtherance of the combination or conspiracy, AID members enacted by Bylaw prohibiting the advertisement of their dental practices to the public without obtaining prior approval from AID's Board of Directors. Furthermore, AID allegedly disciplined members who advertised their practices without obtaining the Board of Directors' prior approval. AID also allegedly threatened a third-party payer with a collective refusal to deal by AID members in order to force that third-party payer to increase reimbursement levels for dental services.

The complaint alleges that, as a result of AID's actions, its members have agreed not to, and do not, advertise the price, quality or convenience of their dental practices. It further alleges that AID members have agreed not to compete with each other by independently deciding whether, and on what terms to do business with third-party payers, but have agreed instead to do business with third-party payers as a group, in order to increase the fees which AID members receive for their services. Therefore, it is alleged that AID's actions have deprived consumers of the information which can be obtained from truthful advertising concerning the price, quality and convenience of AID members' dental practices. AID's actions have also allegedly deprived consumers of the benefits of third-party payers' efforts to contain or limit the cost of dental services to subscribers in Pueblo County, Colorado.

The proposed consent order would prohibit AID from restricting, regulating, interfering with or advising against the advertising of dentists' services. Aid does not maintain ethical standards for the practice of dentistry, nor does AID purport to serve as an organization which regulates the ethical standards of its members. False or deceptive advertisements by dentists are subject to scrutiny by the State of Colorado and such dentists' organizations as the Colorado Dental Association and the Southeastern Colorado Dental Society.

The proposed consent order would further prohibit AID or its members from threatening, coercing, compelling or inducing any third-party payer for dentists' services into accepting a position taken by AID, or AID and its members, concerning the amount, manner of calculating or terms of reimbursement paid by third-party payers to subscribers for dental services.

The proposed order would require that within thirty days after the order becomes final AID repeal any provision of its Bylaws which is inconsistent with the proposed consent order and, forty days after the order becomes final, mail a copy of this order, and a letter explaining the Bylaw changes to every AID member. The proposed order also requires AID to provide each new AID member with a copy of the order. To ensure that the proposed order is obeyed, AID would be required within sixty days after the order becomes final to file a written report with the Commission setting forth the manner and form of its compliance.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or modify in any way their terms.

Carol M. Thomas,

Secretary.

[FR Doc. 82-22261 Filed 8-13-82; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 5

[Notice No. 417]

100 and 375 Milliliter Standards of Fill

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend 27 CFR Part 5 authorizing standards of fill for distilled spirits. This proposal would allow 100 milliliter (ml) (3.4 fl. oz.) and 375 ml (12.7 fl. oz.) distilled spirits containers to be bottled and shipped in interstate and foreign commerce.

This notice of proposed rulemaking is being issued to solicit public comment on whether 100 ml distilled spirits containers should enter interstate and foreign commerce. Treasury Decision ATF-86 does not allow 100 ml containers to enter interstate or foreign commerce and as a result, some distillers and importers are excluded from entering their brands in commerce within some states.

The proposed 375 ml size would effectively replace the old ⅘ pint size, which has not been used in the bottling of distilled spirits since January 1, 1980. This size was proposed by Bacardi Imports, Inc. and was supported by numerous letters from various sectors of the distilled spirits industry.

ATF may issue a final rule concerning each proposed size after consideration of all comments received on this notice and on T.D. ATF-86.

DATE: Written comments must be received by November 15, 1982.

ADDRESS: Send written comments to: Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385, Attention: Notice No. 417.

FOR FURTHER INFORMATION CONTACT: Charles N. Bacon or Roger Bowling, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: 202-566-7626.

SUPPLEMENTARY INFORMATION:

Background on 100 ml

Treasury Decision ATF-86, June 19, 1981 (46 FR 32224), authorized the use of a 100 ml (3.4 fl. oz.) distilled spirits container as a replacement for the 4 fl. oz. size. This rule was issued as a result of an emergency condition existing at the Overbrook Egg Nog Corp., a small distilled spirits plant in Maryland, which was highly dependent on bottling the 4 ounce bottle for sale within Maryland. Section 19.632 of the distilled spirits plant regulations did not permit the bottling of 4 ounce containers or of a close metric equivalent, and enforcement of this rule would have resulted in the closing of this plant. Additionally, the State of Maryland indicated that the bottle size was important to the State.

ATF issued T.D. ATF-86 to allow the bottling of 100 ml containers for intrastate use only effective June 19, 1981. This temporary rule solicited comment on whether the ml should be retained as a permanent intrastate size, or should be eliminated. Moreover, it stated that ATF would initiate rulemaking to consider authorizing the 100 ml as a standard of fill for use in interstate and foreign commerce.

ATF is now proposing to authorize the 100 ml for use in interstate and foreign commerce. ATF believes that authorizing the 100 ml size might promote competition among distilled spirits plants, and could increase the availability of brands in the 100 ml size.

The 100 Milliliter as an Intrastate Size

Many respondents to T.D. ATF-86 noted that an anti-competitive situation was created by that Treasury decision. By authorizing the 100 ml for intrastate use only, distilled spirits plants located outside of a State, and all importers, are prevented from entering their products in 100 ml containers in commerce within that State. This results in giving plants located within that State a competitive advantage. It also gives an advantage to multi-plant bottlers over those bottlers operating only one plant, since multi-plant bottlers may have plants located in several States. ATF also notes that there are several States in which only one distilled spirits bottler is located. In these States, the intrastate authorization of the 100 ml has assured that plant a virtual monopoly in bottling 100 ml distilled spirits bottles for sale within that State.

A second theme of the comments to T.D. ATF-86 is that fewer brands are

available and that it is costly to produce brands in the 100 ml size. Several respondents noted that for an out-of-state firm to compete in an instrastate market, it must either establish in-state bottling facilities, or contract with an in-state bottler to bottle its brands. The establishment of bottling facilities entails a high initial cost, and bottling small lots of 100 ml containers is very costly when compared to bottling larger numbers of 100 ml containers in one plant for nation-wide distribution. Similarly, the alternative for brand owners to contract with in-state bottlers to bottle the 100 ml is expensive due to limited production of the size for that State only. Some owners of distilled spirits brands expressed reluctance to ship bulk spirits to an independent bottler for bottling since the brand owner would lose control over the quality of the spirits (bearing the brand owner's label) being bottled by independent bottler. Moreover, many imported products are bottled only in the country of origin, and the brand owners do not ship these distilled spirits in bulk for bottling. The result is that a limited number of brands are available to the consumer in 100 ml containers in an intrastate market. In States having no distilled spirits bottlers, the 100 ml is not available.

Proposal for a 100 ml Under the Federal Alcohol Administration Act

ATF is proposing to authorize 100 ml as a standard of fill in 27 CFR Part 5. This would allow the size to be entered into interstate commerce, and to be imported. The 100 ml (3.4 fl. oz.), size is distinct from either of the closest metric sizes of 50 ml (1.7 fl. oz.) and 200 ml (6.8 fl. oz.), and should not contribute to consumer deception. The 100 ml also fills a relatively large gap existing between the 50 and 200 ml sizes.

ATF notes that the 100 ml is $\frac{1}{30}$ of an ounce or 15 percent smaller than the 4 ounce size, and in those areas where the 4 ounce has been recently sold, if no similar price adjustments are made, consumers might be paying a higher unit price for the 100 ml container. AFT, however, has no pricing authority. Conversely, where the 4 ounce distilled spirits container has been absent from the market, the 100 ml would be an entirely new size which would not be compared with the 4 ounce size.

Background on the 375 ml

Bacardi Importers, Inc., has petitioned ATF to amend 27 CFR Part 5 to add the 375 ml as a standard of fill for distilled spirits. This would allow the 375 ml standard of fill to be bottled and entered into interstate and foreign commerce. The petitioner claims that there is a consumer demand for the 375 ml to replace the market loss resulting from the repeal of the $\frac{4}{5}$ pint as a standard of fill. The 375 ml equals 12.7 fluid ounces whereas the $\frac{4}{5}$ pint contains 12.8 fluid ounces. At present, the 200 ml and the 500 ml bottle sizes are the primary small size choices for consumers. These two sizes effectively replaced the $\frac{1}{2}$ pint and pint sizes. Further, the petitioner claims the adoption of the 375 ml would facilitate international trade since Canada, the United Kingdom, and the European Economic Community (EEC) use the 375 ml as a standard of fill.

Regulation Proposal for the 375 ml

ATF is proposing to amend the standard of fill regulation to include the 375 ml. However, ATF previously considered the 375 ml size during the rulemaking on Treasury Decision ATF–25 (41 FR 10218–19), and later denied two similar petitons because the metric standards of fill had just become mandatory and since the 375 ml closely corresponds to the size of the 500 ml bottle, there was the possibility of consumer confusion. ATF believes this issue should be aired through the rulemaking process due to the interest shown by various segments of the distilled spirits industry for their support of the petition.

Proposed Regulatory Changes in Part 5

It is proposed to amend § 5.47a to add the 100 ml and 375 ml standards of fill. Several other sections would be amended to reflect the fact that metric standards of fill became mandatory for all distilled spirits bottling beginning January 1, 1980. As a consequence, § 5.38 dealing with statement of U.S. net contents, is obsolete and would be removed; § 5.38a Metric net contents, would replace it.

The exception to the standards of fill for cordials, liqueurs, cocktails and specialties, expired January 1, 1980, and those products must now be bottled in metric bottles. Therefore it is proposed to remove § 5.48(b) which is obsolete, and to move § 5.48(a) giving exceptions to design and headspace requirements into § 5.46.

The completeness of conversion requirement in § 5.47a would be removed since all bottling must now be in metric bottles. The effective date of metric conversion is revised in paragraph (d) of § 5.47. Section 5.45 would be amended to show the removal of § 5.48.

List of Subjects in 27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

Public Participation

Respondents to this notice of proposed rulemaking should address the authorization of the 100 ml, and comment on whether it should be made a standard of fill in Part 5.

ATF is also seeking comment on whether the authorization of the 100 ml and 375 ml sizes would pose tax administration problems, or production, recordkeeping, or inventory problems for distilled spirits plant proprietors and importers. ATF wishes to know the effect, if any, that authorizing these sizes would have on competition. Finally, ATF requests comment on whether the 8 percent headspace requirement in § 5.46(b) should be imposed on liquor bottles of 100 ml, or if they should be exempted from the headspace requirement.

Specific comments are requested on whether the similarity in bottle sizes between the 375 ml and the 500 ml would be confusing or misleading; whether the market need really exists for the 375 ml since the 200 ml and 500 ml are already available for small-size purchases; and whether international trade will be facilitated by the adoption of this size since the authorization by the EEC expires in 1988.

ATF will take into consideration all comments on this notice of proposed rulemaking and to T.D. ATF–86 when issuing a final rule to amend Parts 5 or 19. If ATF decides on the basis of all comments and other evidence, to allow the 100 ml in interstate commerce, ATF will amend Part 5 and revoke T.D. ATF–86. If ATF decides to restrict the 100 ml to intrastate use only, the exception for the 100 ml will be retained in 27 CFR 19.632.

All comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which the respondent considers to be confidential or inappropriate for disclosure to the public should not be included in a comment. The name of any person submitting comments is not exempt from disclosure.

Any interested person may request an opportunity to present oral testimony at a public hearing. However, the Acting Director reserves the right, in light of all circumstances, to determine if a public hearing is necessary.

Written comments are available for inspection or copying during normal business hours at: ATF Reading Room, Room 4405, Federal Building, 12th & Pennsylvania Ave., NW., Washington, DC.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because this proposed rule, if issued as a final rule, will not have a significant economic impact on a substantial number of small entities. This proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities, or impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule, if issued as a final rule, will not have a significant economic impact on a substantial number of small entities.

Compliance with Executive Order 12291

It has been determined that this proposed rule is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (1981) because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Drafting Information

The principal authors of this notice of proposed rulemaking are Charles N. Bacon and Roger L. Bowling, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority and Issuance

This notice of proposed rulemaking is issued under the authority contained in section 5 of the Federal Alcohol Administration Act, 49 Stat. 981, as amended (27 U.S.C. 205). Accordingly, the Acting Director is proposing to amend 27 CFR Part 5 as follows:

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Par. 1. The table of sections in 27 CFR Part 5 is amended by removing the listing for §§ 5.38a and 5.48.

Par. 2. Section 5.38 is revised to reflect the fact that metric standards of fill became mandatory on January 1, 1980, and to delete the requirement to show the U.S. equivalent volume on bottles labeled in metric units. As reviewed, § 5.38 reads as follows:

§ 5.38 Net contents.

(a) *Bottles conforming to the metric standards of fill.* The net contents for distilled spirits shall be in the same manner and form as set forth in the standards of fill in § 5.47a.

(b) *Bottles not conforming to metric standards of fill.* The net contents of distilled spirits bottled before January 1, 1980, in bottles not conforming to the metric standards of fill, shall be stated in the same manner and form as set forth in § 5.47 (a) except for cordials and liqueurs, cocktails, highballs, bitters and other specialties as specified by the Director. The net content for these specialty products shall be stated in U.S. measure (i.e., gallons, quarts, pints, fluid ounces).

(c) *Net contents marked in bottle.* The net contents need not be marked on any label if they are legibly blown, etched, sandblasted, marked by underglaze coloring or otherwise permanently marked by any method approved by the Director on the side, front, or back of the container in an unobscured location. Containers of 200 ml or greater capacity shall bear letters and figures of not less than one-quarter inch height.

(d) *Qualifying statements.* Words or phrases qualifying statements of net contents are prohibited.

§ 5.38a [Removed]

Par. 3. Section 5.38a is removed.

§ 5.45 [Amended]

Par. 4. Section 5.45 is amended by removing the reference to § 5.49 and replacing it with § 5.47 to reflect the deletion of §§ 5.48 and 5.49.

Par. 5. Section 5.46 is amended by adding a new paragraph (d) giving the exception to the headspace and design requirements. As added, § 5.46(d) reads as follows:

§ 5.46 Standard liquor bottles.

* * * * *

(d) *Exceptions.* The headspace and design requirements in paragraphs (b) and (c) of this section do not apply to liquor bottles which are specifically exempted by the Director, pursuant to an application filed by the bottler or importer.

Par. 6. Section 5.47 is amended by removing the reference to the conversion period to the metric standards of fill in paragraph (d). As revised, § 5.47(d) reads as follows:

§ 5.47 Standards of fill.

* * * * *

(d) *Limitations.* This section does not apply after December 31, 1979.

Par. 7. Section 5.47a is amended by (1) adding 100 and 375 milliliters to the standards of fill; (2) deleting paragraph (d) since the metric conversion period is over; and (3) redesignating paragraph (e) as paragraph (d). The revised paragraph (a) reads as follows:

§ 5.47a Metric standards of fill.

(a) *Authorized standards of fill.* The standards of fill for distilled spirits are the following:

1.75 liters	375 milliliters
1.00 liters	200 milliliters
750 milliliters	100 milliliters
500 milliliters	50 milliliters

* * * * *

§ 5.48 [Removed]

Par. 8. Section 5.48 is removed.

Signed: July 1, 1982.

Stephen E. Higgins,

Acting Director.

Approved: July 20, 1982.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 82-22273 Filed 8-13-82; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 161

[CGD 73-186]

Berwick Bay Vessel Traffic Service

AGENCY: Cost Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes regulations establishing a vessel traffic service (VTS) at Berwick Bay (Morgan City, Louisiana), similar to the one presently in operation under a Coast Guard local order. These regulations would require all vessels to comply with certain vessel traffic directives. In addition, all vessels subject to the Vessel Bridge-to-Bridge Radiotelephone Regulations and certain other vessels would be required to comply with reporting and operating procedures

before entering and while in the proposed VTS Area. Traffic congestion, periodic high water, and navigation limitations in the area create a hazard to life, property and the marine environment. The proposed regulations are intended to prevent collisions, rammings, and groundings and to protect the navigable waters of the VTS Area from environmental harm resulting from collisions, rammings, and groundings.

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

ADDRESSES: Comments may be mailed to Commandant (G–CMC/44) (CGD 73–186), U.S. Coast Guard, Washington, DC 20593. Comments may be delivered to an will be available for inspection or copying at the Marine Safety Council (G–CMC/44), Room 4402, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593, (202) 426–1477 between 8 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Edward J. LaRue, Jr., Office of Marine Environment and Systems (G–WWM–2), Room 1608, U.S. Coast Headquarters, 2100 Second Street SW., Washington, DC 20593, (202) 426–4958 between 8 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The public is invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Comments should include the name and address of the person making them, identify this notice (CGD 73–186) and the specific section of the proposal to which each comment applies, and give the reasons for the comments. If an acknowledgement is desired, a stamped, addressed postcard should be enclosed. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

No public hearings is planned, but one will be held if requested in writing by anyone raising a genuine issue and desiring to make an oral presentation.

Drafting Information

The principal persons involved in the drafting of this proposal are: Mr. Edward J. LaRue, Jr., Project Manager, Office of Marine Environment and Systems, and Mr. Stephen H. Barber, project Counsel, Office of the Chief Counsel.

Backgound

On October 17, 1978, the President signed into law the "Port and Tanker Safety Act of 1978" (Pub. L. 95–474, 92 Stat. 1471) which amends and supersedes the "Ports and Waterways Safety Act of 1972". The amendments are in reponse to the findings of Congress that—

(a) Navigation, vessel safety, and protection of the marine environment are matters of major national importance;

(b) Increased vessel traffic in the Nation's ports and waterways creates substantial hazard to life, property, and the marine environment; and

(c) Greater supervision of vessel and port operations is necessary in order to reduce the hazard created by increased vessel traffic.

Section 4 of the Ports and Waterways Safety Act, as amended, authorizes the establishment of vessel traffic services for controlling and supervising vessel traffic by imposing reporting and operating requirements on vessel operators.

Berwick Bay (Morgan City, Louisiana) is located at the junction of the Atchafalaya River Route, the Intracoastal Waterway, and the Intracoastal Waterway Morgan City to Port Allen Alternate Route. The Atchafalaya River is a short cut water carrier route (saves 175 miles) from the Mississippi River to points west. It is one of the busiest waterways in the United States, both in terms of vessel passages and tonnage (most of which is petroleum and chemicals), and one of the highest ranking waterways in terms of dollar cost of damage due to collisions, groundings, and pollution.

Compounding the problems caused by traffic congestion, three bridges, all within 1,550 feet of each other, cross Berwick Bay. They link Morgan City to the east with the City of Berwick, Louisiana to the west. Two are fixed highway bridges with vertical clearances of 50 and 72 feet. The third, and the most downstream, is the Southern Pacific Railroad (SPRR) mainline bridge with a lift span having a vertical clearance of only four feet when down. Periods of extreme high water and associated fast currents have contributed to the fact that the SPRR bridge has been struck by vessels more than 530 times since 1946. In a 1976 Coast Guard study on towboat collisions with bridges (Coast Guard Reports CG–D–77–76 and CG–D–118–76), this bridge was reported struck by towboats more times than any bridge included in the study. Misalignment of the navigational openings of the three bridges, once a factor contributing to the number of collisions, was remedied in 1971 with the relocation of the SPRR bridge's navigational opening. However, collisions continued, most notably the 1978 collision of the four barge tow of the motor vessel STUD with the eastern fixed span of the SPRR bridge. The collision resulted in $4,000 damage to the STUD and $1,400,000 damage to the bridge.

In an effort to respond to the problem, the Eighth Coast Guard District has issued several special orders since 1973 establishing operational restrictions on vessels transiting Berwick Bay and, in 1974, established a vessel traffic service (VTS). The procedures under which the present VTS operates have been published in Coast Guard Local Notice to Mariners, Special Notice 1–82. Copies are available from the Berwick Bay Vessel Traffic Center (VTC) on the Commander, Eighth Coast Guard District, at the addresses listed in the note to proposed §161.709. The proposed regulations would replace the existing provisions, many of which are similar to those being proposed.

Discussion of the Proposed Rules

Though most of the proposed regulations are self-explanatory, the following discussion is offered in the hopes that it might add some clarification, stimulate public response, and note variations between the proposed rules and the existing provisions.

Purpose, §161.701(a)

The purpose of the proposed regulations (§161.701(a)) is consistent with the statutory findings previously discussed under the "Background" section of this preamble. This proposal addresses the problems caused by traffic congestion, converging waterways, and navigational limitations by establishing a vessel traffic service (VTS) in the Berwick Bay area and by imposing reporting and operating requirements on vessel operators.

Applicability, §161.701 (b), (c) and (d)

Only one major provision of the proposed regulations, §161.711 on directing vessel movement, would apply to all vessels operating in the VTS area. All of the other proposed regulations would apply to one or more of the following classes of vessels:

(1) Vessels required to have a radiotelephone under the Vessel Bridge-to-Bridge Radiotelephone Regulations (33 CFR Part 26).

(2) Recreational vessels less than 300 gross tons.

(3) Commercial vessels not required to have a radiotelephone.

(4) Vessels engaged in towing.

Recreational vessels under 300 gross tons would make only an initial report (proposed §161.739), but only if they

intend to transit under the lift span of the SPRR bridge (proposed § 161.701(d)(1)). If they do not intend to go under the lift span or can safely pass to either side of the lift span, recreational vessels could go anywhere in the VTS area without reporting.

Commercial vessels not subject to the Vessel Bridge-to-Bridge Radiotelephone Regulations (33 CFR Part 26) would be required to comply with the same reporting requirements as recreational vessels under 300 gross tons (proposed § 161.701(d)). However, these commercial vessels woud have to report regardless of whether they intend to transit under the SPRR bridge.

The bulk of the proposed regulations, §§ 161.701 through 161.749, would apply only to larger vessels, those required to have a radiotelephone under the Vessel Bridge-to-Bridge Radiotelephone Act. Under the proposed regulations these vessels would be required to maintain a radiotelephone listening watch (proposed § 161.721), comply with various procedures in the event of a radiotelephone equipment failure (proposed § 161.729(b)), make various vessel movement reports (proposed §§161.735 through 161.745), report any equipment impairment that affects safe navigation (proposed § 161.747), and report any deviations under § 161.749.

A separate section of the proposed regulations, the High Water Towing Limitations (proposed §§ 161.761 through 161.769), would affect only towing operations and will be discussed at length later in this preamble.

Definitions, § 161.703

"Available horsepower" is used in the proposed regulations only in connection with determining the horsepower to length ratios of vessels with tows (proposed § 161.767(d)). It is the total horsepower output of all operating propulsion equipment on a vessel engaged in a single towing operation, except headboats and bowsteering units. If the towing operation involves several towing vessels, then the available horsepower would be the sum of the horsepower outputs of all the vessels, excluding that of headboats and bowsteering units. Therefore, if a vessel had an engine shut down for repairs, the available horsepower figure would not include the output of the engine that was shut down for the purpose of these regulations.

"Vessel Traffic Center" or "VTC" means either the shore based facility operating the VTS or the Commanding Officer of the VTC, or that person's authorized representative, depending upon the context. For example, a movement report to the VTC would probably be received by a Coast Guard radio operator who was authorized by the Commanding Officer to receive such reports on behalf of the VTC.

VTS Operating Manual, § 161.709

A VTS operating manual, providing information on operating requirements for the benefit of vessel operators, would be prepared once final regulations are published. Though only vessels required to have a bridge-to-bridge radiotelephone would be required to have a manual, it would be available to any user at the address listed in proposed § 161.709.

VTC directions, § 161.711

The Commander, Eighth Coast Guard District, and the Captain of the Port, New Orleans, already have the authority to control all vessel traffic in Berwick Bay during periods of reduced visibility, adverse weather, or vessel congestion or when other hazardous circumstances exist (33 CFR 160.111). They may issue orders: (a) Controlling traffic; (b) specifying times when vessels may enter or move within the bay; or (c) directing the movement of vessels navigating in an unsafe manner or with improperly functioning equipment. The proposed regulations would not affect the authority of the District Commander or Captain of the Port but would only permit the Commanding Officer of the Vessel Traffic Center (VTC) to exercise a similar authority within the confines of the VTS Area. The Commanding Officer of the VTC needs this authority because that officer is in the best position to quickly learn of and respond to an emergency or hazardous situation.

Traditionally, the Coast Guard uses its authority to control vessel movement sparingly and only when no other means are appropriate under the circumstances. Instead, the Coast Guard prefers to assume the role of advisor, issuing information of assistance to vessel operators for the benefit of all concerned.

Authorization to deviate, §§ 161.715 and 161.717

From time to time the need may arise to permit a particular vessel to deviate from these rules after it has been shown that the proposed activity can be done in a safe manner (§ 161.715). For example, a dredge operator who intends to do maintenance dredging on a channel in the VTS Area but who would be prevented from doing so under proposed § 161.713 (obstructing navigable channels) might submit a written request under proposed § 161.715 stating the problem and describing the proposed operations. The dredge operator might also seek authorization to eliminate some of the reports because of the frequent, short movements of the dredge.

The authorization to deviate from the regulations, as provided by proposed § 161.715, is distinct from the authority to deviate in an emergency situation under proposed § 161.717. Under proposed § 161.715, the activity for which a deviation would be requested is one that could be planned for the future and one that would permit the submission and consideration of a written request. However, a deviation under proposed § 161.717 would be one taken by the master during an emergency to avoid endangering persons, property, or the marine environment. For example, a master fails to report at a required reporting point because, at the time the vessel passed the point, the master was maneuvering the vessel to avoid a collision. Under the emergency provision, the master may be relieved of the duty to report at the proper location. However, as deviations are permitted only "to the extent necessary", once the danger passes, the master would still be required to make the report even though the reporting point had already been passed.

Communications rules, §§ 161.721 through 161.729

These sections would apply primarily to vessels required to have a radiotelephone. Some of these proposals, such as that requiring a listening watch on the frequency designated in the current edition of the VTS Operating Manual (proposed § 161.721), are consistent with the Bridge-to-Bridge Radiotelephone Regulations and would impose no additional requirements. Other vessels would be required to comply only with § 161.723 on the use of the English language in reporting.

Reporting rules, §§ 161.735 through 161.747

These rules would apply primarily to vessels required to have a radiotelephone. Recreational vessels under 300 gross tons intending to transit the lift span of the SPRR bridge and commercial vessels not required to have a radiotelephone would have to make an initial report upon entering or starting up in the VTS Area. If they decide to take a route thrugh the VTS Area other than that reported in the initial report, they would have to make a deviation report.

Vessels required to have a radiotelephone would have to make an initial report (proposed § 161.739) on

entering or starting up within the VTS Area, movement reports (proposed § 161.743) when passing reporting points listed in § 161.783, and a final report (proposed § 161.745) on leaving or terminating within the VTS Area. In addition, these vessels would have to make a deviation report (proposed § 161.749(a)) if they change their reported route plans, and a report of equipment impairment (proposed § 161.747) if they have an impairment, collision, or grounding within the VTS Area.

An example of typical voyage for a vessel required to have a radiotelephone would be as follows. At the home port in Houston, the master of a towing vessel is planning to tow several barges containing chlorine along the Intracoastal Waterway (ICW), through the VTS Area, and then north along the Atchafalaya River Route. Before leaving Houston, the master or agent may choose to telephone the VTC on land line ((504) 385–2462) for information on whether a precautionary notice that high water towing limitations may soon go into effect has been issued or whether the limitations are already in effect. At that time, the VTC could offer non-binding advice when it believes the limitations will go into effect or, if already in effect, whether they might be in effect when the vessel arrives. This advice could be valuable in that it may assist the master in deciding how to make up the tows.

When the vessel arrives at the western boundary of the VTS Area (Mile 99 ICW West of Harvey Lock), the master makes the initial report. The master would report that there is "dangerous cargo" (i.e., chlorine) on board, whether there is an impairment to a vessel, the "available horsepower" and "overall length" of the tow, and other information called for in proposed § 161.739. As the information is given, it is being received by other vessels in the VTS Area which are required to monitor the frequency designated in the VTS Operating Manual (proposed § 161.721) or do so voluntarily.

When the vessel approaches the overhead cable at mile 119 on the Atchafalaya River Route, the master makes a movement report (proposed § 161.743). This report is short and provides the VTC with information on the progress of the voyage. At this point, the vessel is about two-thirds of a mile from the critical junction south of the SPRR bridge.

After passing under the bridges, the master makes a movement report upon passing Conrad's Point in Berwick Bay.

When the vessel reaches the Stouts Pass Reporting Point at Mile 115 on the Atchafalaya River Route, the master again makes a movement report. Two miles upstream, the master makes the final report (proposed § 161.745) at Stouts Point Light upon leaving the VTS Area.

Under the proposed means of reporting rule (§ 161.735(b)), the operator of a small recreational vessel intending to transit the lift span of the SPRR bridge need only give the initial report by telephone from home or a marina and a later deviation report if the operator changes the original route plan reported in the initial report. Reporting by these vessels, as well as all other vessels, is needed because it is important for the VTC to know of all vessels regardless of size that will be using the relatively narrow opening in the SPRR bridge. Any advice the VTC might give on expected traffic through the bridge would be questionable if only certain vessels had to report.

High Water Towing Limitations, §§ 161.761 Through 161.769

The water level in Berwick Bay fluctuates seasonally through a range of several feet. As the water level rises, the velocity of the flow through the bay increases. This increase in velocity severely affects the maneuverability of towing operations and has been a major contributing factor in causing numerous vessels to strike the bridges in the bay. The Coast Guard has determined that when the water level is three feet or higher above mean sea level, the velocity is great enough to justify imposing operational limitations on towing operations in the bay. Since 1973, the Coast Guard has issued several temporary orders addressing the hazards of higher water in the bay. The most recent order, published in the Coast Guard Local Notice to Mariners, Special Notice 1–82, is in effect today. The high water limitations established by the existing order, as well as those being proposed, apply—

(1) Only to vessels engaged in towing;

(2) Only to those towing operations which will pass under the SPRR bridge or one of the two U.S. 90 highway bridges to the north;

(3) Only during periods of high water; and

(4) Only when the limitations are in effect.

The major differences between the existing provisions and those being proposed are discussed below.

a. Determining when the limitations should go into effect and be removed.

The existing provision (section 8(a) of Special Notice 1–82) is as follows:

> High water vessel traffic limitations will be put in effect and removed by Notice to Mariners. High water will be considered to exist when the Morgan City River Gauge reads three feet above mean sea level or more for five consecutive days and is anticipated to remain at three feet or more for an additional five consecutive days. High water limitations will be removed when the Morgan City River Gauge reads less than three feet above mean sea level for five consecutive days and is anticipated to remain at less than three feet for an additional five consecutive days.

This provision requires five days of three foot levels or higher ("high water") and an anticipation of 5 more days of high water before the limitations may be imposed. The delay in imposing the limitations was intended to provide towing operators with notice of when the limitations may go into effect. Such information was useful to operators who, because of inadequate barge fleeting areas in the vicinity of the VTS Area, found it more feasible to conform their operations to the limitations before beginning the voyage or at great distances from the VTS Area. However, this provision creates a major problem in that it permits unrestricted operations to continue for at least five days during conditions which justify imposing limitations, and possibly for more days. For example, the water level passes the three foot mark on the first day and continues up during the next three days. On the fifth day, the water level starts dropping. On the sixth day, when the determination must be made, it is anticipated that the water will continue to fall and will drop below three feet within a few more days. If, between the sixth and tenth day, the water level does continue to fall but does not quite drop below three feet, the conditions of high water would have existed for 10 days without the safeguards provided by the limitations, despite the recognized need for limitations during those times.

Conversely, a similar problem is created by the procedure to remove the limitations once the water level drops below three feet ("low water"). The water level must remain low for five days and be anticipated to remain low for another five days before the limitations may be removed. During the first five days, the towing industry must continue to comply with the limitations even though the conditions which justify limitations no longer exist. As under the procedure already discussed for imposing limitations, the removal of limitations could be delayed many days more than five depending on the circumstances.

The problems created by the existing procedures for imposing and removing

limitations would be eliminated under proposed § 161.764. This proposal would require that the limitations go into effect as soon as high water is reached, but be removed as soon as low water returns.

b. Notice of high water.

Under this proposal, the initial five day delay in imposing limitations would be deleted. Instead, the Coast Guard is proposing a new method of advance notice as a substitute for the existing five day delay.

Under proposed § 161.762, the Coast Guard would begin issuing precautionary warnings whenever the water level pases the 2.5 foot level and is likely to reach 3 feet above mean sea level. These warnings would provide notice that the limitations may soon go into effect and would be given throughout the precautionary period. When the high water level is reached, notices that the limitations are in effect would be issued continuously until the level falls below three feet. At that time, the issuance of precautionary warnings would be resumed if the drop below three feet appeared to be only temporary.

Under the existing provision, no precautionary warnings are required. The only notice required by the existing provision is one notice in the Local Notices to Mariners indicating that the limitations have gone into effect and one notice that they have been removed.

Under proposed §§ 161.762 and 161.765, notices are provided continuously throughout the precautionary and high water periods by Local Notices to Mariners, by Marine Information Broadcasts, in response to initial reports; or can be obtained by calling the VTC on the telephone or radiotelephone. These notices are in addition to the posting of balls and lights on the SPRR bridge during periods when the limitations are in effect.

As an additional service, the VTC may provide non-binding advice on the approximate date the level is likely to reach or fall below the three foot level, if sufficient information is available.

The Coast Guard is particularly interested in receiving comments on the proposed methods of determining periods when the high water limitations would be imposed and of providing advance notice of possible restrictions. Also, it is requested that comments state the benefits and burdens created under the proposed procedures and recommend any other procedures that should be considered.

c. The limitations.

The proposed limitations are similar to those under the existing order, with the following exceptions. Proposed § 161.767(c) would require that vessels in integrated towing operations not vary in draft more than 10% between the vessel with the deepest draft and the vessel with the shallowest draft. Also, the variation in width of the vessels must not be more than 10% of the beam of the widest vessel.

Proposed § 161.767(d) would require towing operations to have an available horsepower rating of at least 1.5 times the overall length in feet of the towing vessel or vessels and the tow. That ratio would be 3 to 1 for tows carrying any dangerous cargo, except for operations with over 3,000 available horsepower. "Available horsepower", "dangerous cargo", and "overall length" are defined in proposed § 161.703. This provision is being proposed in response, in part, to the National Transportation Safety Board's recommendation M–80–18 on improving safety in Berwick Bay (45 FR 26186; April 17, 1980).

Proposed § 161.768(b) would increase the maximum overall length permitted for southbound integrated units without operable bow steering units from 600 feet to 750 feet.

Proposed § 161.769(b) would increase the maximum permitted number of northbound vessels which are not integrated and have no operable bow steering unit from two to three. These increases are permissible because of the new horsepower to length proposal.

Description of the VTS Area, § 61.781

The boundaries of the VTS Area would be basically the same as those currently existing with the following adjustments based on past operating experience. The boundary would be extended one mile northwest of Berwick Lock to give earlier notice of the arrival of vessels entering from the Lower Atchafalaya River (Bayou Teche) and one mile south of Bayou Boeuf along Bayou Shaffer to give earlier notice of the arrival of vessels entering from Bayou Shaffer. The western boundary (Mile 100 ICW(WHL)) would be moved to Mile 99 at the Floodway Gas Processing Plant. The Mile 7 ICW MC/PA Alternate Route boundary would be moved to Mile 5 at the southern tip of Long Island.

Under proposed § 161.783, the fixed reporting points have been listed for initial reports (proposed § 161.739), movement reports (proposed § 161.743), or final reports (proposed § 161.745). The proposed reporting points differ from those presently in use because, in most cases, the present locations require initial reports followed quickly by movement reports. Two such reports at the fringe of the VTS Area give the VTC little indication of the progress of vessels through the VTS Area. More accurate movement information is particularly important when vessels approach one of the major intersections of waterways. Therefore, the Coast Guard is proposing to eliminate some reports near the VTS boundaries and add reports at intervals throughout the VTS Area. This should enable the VTC to maintain a better picture of traffic conditions in the area.

Public Participation

An effort has been made to consult with, at the earliest possible time, representatives of the maritime community, environmental groups, elected officials, and other affected parties in the preparation of this proposal. Open meetings were held in Morgan City (August 7, 1973) and New Orleans (August 15, 1974) prior to issuing the District order establishing the present VTS. These and subsequent meetings, as well as direct mailings of proposals to known interested parties, have provided the Coast Guard with valuable public input.

This notice solicits further public comment. (See **DATES** and **ADDRESSES**). Direct mailings of copies of this proposal will be forwarded to those who express or have expressed an interest in the subject of these proposed regulations.

Regulatory Evaluation

This proposed rulemaking action is considered to be "non-major" under Executive Order 12291 (46 FR 13193, February 19, 1981) and is classified as "non-significant" under Department of Transportation Order 2100.5, "Policies and Procedures for Simplification, Analysis and Review of Regulations," dated May 22, 1980.

A Regulatory Impact Analysis under E.O. 12291 is not required. A draft Evaluation has not been prepared because the proposed regulations do not impose a substantial economic burden. For example, the equipment required by the proposed regulations, a radiotelephone, would be required only on vessels subject to the Vessel Bridge-to-Bridge Radiotelephone Regulations (33 CFR Part 26). Under the Bridge-to-Bridge regulations, these vessels already must have a radiotelephone. Other vessels which would have to report under the proposed regulations (§ 161.701(d)) would be permitted to use a telephone or other reasonable means in making their reports (proposed § 161.735(b)).

The various reports that would be required by the proposed regulations are for navigational safety purposes and would call for information that is readily available or observable to vessel

operators. This is information which operators would already know whether or not reporting was required. The time required for reporting on a typical voyage through the VTS Area would be about five minutes for Bridge-to-Bridge vessels (5 reports) and 1 minute for other vessels (1 report).

A VTS Operating Manual would be required to be on board Bridge-to-Bridge vessels operating in the VTS Area. However, this manual is available upon request (proposed § 161.709) and would facilitate operations by combining all relevant information into one document.

Directions issued to control traffic (proposed § 161.711) would restrict the movements of those affected, but the authority to issue these is already exercised by the Coast Guard. The proposed regulations would only permit the VTC, as well, to issue them.

Only during those periods when the High Water Towing Limitations are in effect would a potential burden arise. Because the limitations may restrict length, horsepower, and configuration of vessels with tows, certain changes may be necessitated for a particular operation to comply with the proposed requirements. For example, an operator may have to run fewer barges than usual to meet the length limitations; or the operator may have to use a towboat with higher horsepower to meet the required horsepower to length ratios. Operators of integrated tows would be required to consider variations in width and draft of their vessels to meet the proposed limitations under § 161.767(c).

The potential burden is mitigated by the fact that, since 1976, the limitations have usually gone into effect once per year and never more than twice. Also in that period, the number of days per year the limitations were in effect ranged from 17 days to 74 days, with an average of about 40 days per year. Most of these requirements have been applied during high water since 1974 with no adverse comments and, with the exception of the horsepower to length requirement (proposed § 161.767(d)), the new requirements are a relaxation of the existing ones.

Based on experience under the existing requirements, the Coast Guard is of the opinion that the costs imposed on vessel operators will not be burdensome. These requirements should reduce the incidence of vessels striking the bridges in the bay. Based on this, the proposed restrictions should result in a net benefit to both the maritime and railroad industries. The Coast Guard specifically asks for comments on these conclusions.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 through 612) requires an initial regulatory flexibility analysis, or a summary thereof, to be placed in the notice of proposed rulemaking if the proposal would have a significant economic impact on a substantial number of small entities. "Small entities" include (1) independently owned and operated small businesses which are not dominant in their field and which otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632), (2) small not-for-profit organizations, and (3) small governmental jurisdictions, such as towns with a population of less than 50,000.

For the reasons discussed above, the Coast Guard believes that these regulations will not have a significant economic effect. No complaints or comments about unequal or excessive impact of the VTS have been received by the Coast Guard since the Special Notice to Mariners was first issued. Therefore, pursuant to section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164, Pub. L. 96–354), it is certified that these regulations will not have a significant economic impact on a substantial number of small entities.

Reporting and Recordkeeping Requirements

There are no reporting or recordkeeping requirements in the proposed regulations which fall under the Paperwork Reduction Act of 1980 (Pub. L. 96–511; 94 Stat. 2812; December 11, 1980). The reports made by operators under the proposed Reporting Rules (§§ 161.735 through 161.749) are incident to the operation of vessels and do not qualify as the type of report addressed by the act.

Environmental Impact

This action has been throughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation, in accordance with Section 2.B.3.(g) of Commandant instruction (COMDTINST) M16475.1A.

List of Subjects in 33 CFR Part 161

Coast Guard, Hazardous materials transportation, Navigation (water), vessels.

PART 161—VESSEL TRAFFIC SERVICE

In consideration of the foregoing, it is proposed that Part 161 of Title 33 of the Code of Federal Regulations be amended as follows:

1. The authority citation for Part 161 reads as follows:

Authority: Sec. 12 of sec. 2, Pub. L. 95–474, 92 Stat. 1477 (33 U.S.C. 1231); 49 CFR 1.46(n)(4).

2. Sections 161.701 through 161.783 are added as follows:

* * * * *

Berwick Bay Vessel Traffic Service

General Rules

Sec.

161.701 Purpose and applicability.
161.703 Definitions.
161.705 Vessel operation in the VTS Area.
161.707 Laws and regulations not affected.
161.709 VTS Operating Manual.
161.711 VTC directions.
161.713 Obstructing navigable channels.
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161.117 Emergencies.

Communications Rules

161.721 Radiotelephone listening watch.
161.723 Radiotelephone reports.
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161.729 Radiotelepone equipment failure.

Reporting Rules

161.735 Means of reporting.
161.739 Initial report.
161.743 Movement reports.
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161.749 Deviation report.

High Water Towing Limitations

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161.762 Precautionary notices.
161.764 When limitations are in effect.
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161.767 General limitations.
161.768 Southbound limitations.
161.769 Northbound limitations.

Descriptions and Geographic Coordinates

161.781 VTS Area.
161.783 Reporting points.

* * * * * *

Berwick Bay Vessel Traffic Service

General Rules

§ 161.701 Purpose and applicability.

(a) Sections 161.701 through 161.783 prescribe rules for vessel operation in the Berwick Bay (Morgan City, Louisiana) Vessel Traffic Service (VTS) Area to prevent collisions, rammings, and groundings and to protect the navigable waters of the VTS Area from environmental harm resulting from collisions, rammings, and groundings.

(b) The General Rules in §§ 161.701 through 161.717, except the requirement in § 161.709 to have a VTS operating manual, apply to the operation of all vessels.

(c) The requirement in § 161.709 to have a VTS operating manual, the Communications Rules in §§ 161.721 through 161.729, and the Reporting Rules in §§ 161.735 through 161.749 apply to the operation of all vessels subject to the Vessel Bridge-to-Bridge Radiotelephone Regulations in Part 26 of this chapter.

(d) In addition tothe vessels under paragraph (c) of this section § 161.725 on use of English language in reports, § 161.735 on means of reporting, § 161.739 on initial reports, and § 161.749 on deviations from the reported route apply to the operation of—

(1) Recreational vessels less than 300 gross tons intending to transit under the lift span of the Southern Pacific Railroad (SPRR) bridge; and

(2) Commercial vessels not subject to the Vessel Bridge-to-Bridge Radiotelephone Regulations in Part 26 of this chapter.

§ 161.703 Definitions.

As used in §§ 161.701 through 161.783:

"Available horsepower" means the total horsepower output of all operating propulsion equipment on all vessels engaged in a single towing operation, except headboats and bowsteering units.

"Bow steering unit" means a remotely controlled propulsion unit used to control the head of a tow.

"Dangerous cargo" means cargo consisting of a commodity listed in 46 CFR 30.25–1 or of a "certain dangerous cargo" under § 161.3.

"Headboat" means a manned, self-propelled vessel used to control the head of a tow.

"Integrated tow" means a tow consisting of specially designed barges that fit to each other and to the towing vessel as one unit.

"Master" means licensed master or operator or, on vessels not required to have a licensed master or operator, the person in command of the vessel.

"Overall length" means the combined length in feet of the towing vessel or vessels and the tow.

"Person" includes an individual, firm, corporation, association, partnership, or government entity.

"SPRR bridge" means the Southern Pacific Railroad bridge across Berwick Bay between the cities of Berwick and Morgan City, Louisiana.

"Vessel Traffic Center" or "VTC" means the shore based facility that operates the Berwick Bay Vessel Traffic Service or the Commanding Officer of the facility, or that person's authorized representative, depending upon the context in which the term is used.

"Vessel Traffic Service Area" or "VTS Area" means the area described in § 161.781.

§ 161.705 Vessel operation in the VTS Area.

Except under § 161.715 (authorized deviations) and § 161.717 (emergencies), no person may cause or authorize the operation of a vessel in the VTS Area contrary to the rules in §§ 161.701 through 161.783.

§ 161.707 Laws and regulations not affected.

Nothing in §§ 161.701 through 161.783 is intended to relieve any person from complying with—

(a) The Inland Navigational Rules Act of 1980 (33 U.S.C. 2001 through 2072);

(b) The technical annexes to the Inland Navigational Rules (Parts 84 through 88 of this chapter);

(c) Vessel Bridge-to-Bridge Radiotelephone Regulations (Part 26 of this chapter);

(d) The Federal Boat Safety Act of 1971 (46 U.S.C. 1451 through 1489); and

(e) Any other law or regulation.

§ 161.709 VTS Operating Manual.

The master of a vessel shall ensure that a copy of the current edition of the Berwick Bay Vessel Traffic Service Operating Manual is available on board the vessel when it is in the VTS Area.

Note.—"Berwick Bay VTS Operating Manual" includes the VTS regulations and navigation information. The manual is available from the Commander, Eighth Coast Guard District (m), Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana 70130 or from the Commanding Officer, Berwick Bay Vessel Traffic Service, 800 David Dr., Rm. 255, Morgan City, Louisiana 70380.

§ 161.711 VTC directions.

(a) During conditions of vessel congestion, adverse weather, reduced visibility, or other hazardous circumstances in the VTS Area, the VTC may issue directions to control and supervise traffic and may specify times when vessels may enter, move within or through, or depart from ports harbors, or other waters in the VTS Area.

(b) Whenever the VTC determines that a vessel in the VTS Area is navigating in an unsafe manner or with improperly functioning equipment, the VTC may direct the vessel's movement or direct it to anchor or moor.

(c) The master of a vessel in the VTS Area shall comply with each direction issued to the vessel under this section.

§ 161.713 Obstructing navigable channels.

Mooring in, anchoring in, or otherwise obstructing a navigable channel in any way is prohibited without first obtaining permission to do so from the VTC.

§ 161.715 Authorization to deviate from these rules.

The Captain of the Port, New Orleans, may, upon written request, issue an authorization to deviate from any rule in §§ 161.701 through 161.783 if that officer finds that the proposed operation can be done safely. A request for an authorization must state the need for the deviation and describe the proposed operation.

§ 161.717 Emergencies.

In an emergency, any master may deviate from any rule in §§ 161.701 through 161.783 to the extent necessary to avoid endangering persons, property, or the marine environment.

Communications Rules

§ 161.721 Radiotelephone listening watch.

The master of a vessel required to make the reports under §§ 161.739 through 161.749 only by radiotelephone shall ensure that a continuous listening watch is maintained on the frequency designated in the current edition of the Berwick Bay VTS Operating Manual, except when transmitting on that frequency.

§ 161.723 Radiotelephone reports.

Each report under §§ 161.739 through 161.749 made by radiotelephone must be made on the frequency designated in the current edition of the Berwick Bay VTS Operating Manual.

§ 161.725 English language.

Each report required by §§ 161.701 through 161.783 must be made in the English language.

§ 161.729 Radiotelephone equipment failure.

(a) Whenever a vessel's radiotelephone equipment fails, compliance with the following is not required:

(1) Section 161.721 on maintaining a listening watch.

(2) Sections 161.739 through 161.749 on reporting, unless those reports can be made by other reasonable means.

(b) Whenever a vessel's radiotelephone equipment fails, permission to proceed must first be obtained from the VTC is the vessel is:

(1) Intending to transit the lift span of the SPRR bridge;

(2) Getting underway from within the VTS Area; or

(3) Transiting any portion of the Intracoastal Waterway between Mile 93 West of Harvey Lock (WHL) and Mile 99 WHL.

(c) The master of a vessel shall ensure that the radiotelephone equipment is restored to operating condition as soon as possible.

Reporting Rules

§ 161.735 Means of reporting.

(a) Reports under §§ 161.739 through 161.749 must be made only by radiotelephone, except as provided under paragraph (b) of this section.

(b) Vessels not subject to the Vessel Bridge-to-Bridge Radiotelephone regulations in Part 26 of this chapter may make initial reports under § 161.739 and deviation reports under § 161.749 by radiotelephone, telephone ([504) 385–2462), or other reasonable means.

§ 161.739 Initial report.

When a vessel enters or begins to navigate in the VTS Area, the master of the vessel shall report the following information to the VTC:

(a) Name of the vessel.

(b) Type of vessel (towing, fishing, supply, etc.).

(c) Location of the vessel.

(d) Route within the VTS Area.

(e) Any dangerous cargo that is on board the vessel or any vessel being towed.

(f) Any impairment to the operation of the vessel as described in § 161.747.

(g) If towing is involved, available horsepower and overall length of the vessels.

§ 161.743 Movement reports.

(a) When a vessel passes a reporting point listed in § 161.783 other than where entering or leaving the VTS Area, the master of the vessel shall report the following information to the VTC:

(1) Name of the vessel.

(2) Name of the reporting point.

(3) If towing is involved, any revision to the available horsepower and overall length information given in the initial report under § 161.739(g).

(b) A movement report is required at the Berwick Lock Reporting Point only for vessels passing through the lock.

§ 161.745 Final report.

When a vessel anchors in, moors in, or departs from the VTS Area, the master shall report the name of the vessel and place of anchoring, mooring, or departure to the VTC.

§ 161.747 Report of equipment impairment.

The master of a vessel in the VTS Area shall report to the VTC as soon as possible—

(a) Any condition on the vessel that may impair its safe navigation, such as fire or a defect in propulsion machinery, steering equipment, radar, or gyrocompass;

(b) Any tow that the towing vessel is unable to control or can control only with difficulty;

(c) When involved in a collision, ramming, or grounding; and

(d) Any radiotelephone equipment failure.

§ 161.749 Deviation report.

(a) Except in an emergency, the master of a vessel in the VTS Area shall report each deviation from the route reported in the initial report under § 161.739(d) before making the deviation.

(b) Whenever a vessel in the VTS Area deviates, because of an emergency, from the route reported in the initial report under § 161.739(d) or from any provision in §§ 161.701 through 161.783, the master of the vessel shall report the deviations to the VTC as soon as possible.

High Water Towing Limitations

§ 161.761 Applicability.

The high water towing limitations (§§ 161.761 through 161.769) apply to the operation of vessels with tows intending to transit under the lift span of the SPRR bridge, or through the navigational openings of either of the two U.S. 90 highway bridges to the north of the SPRR bridge, when those limitations are in effect.

§ 161.762 Precautionary notices.

(a) Whenever the Morgan City River Gauge reads 2.5 feet above mean sea level and the Coast Guard Captain of the Port, New Orleans, or that person's authorized representative, anticipates that the water level will rise to 3 or more feet above mean sea level, the VTC issues precautionary notices that the high water towing limitations may soon go into effect.

(b) Precautionary notices are—

(1) Announced during Coast Guard Marine Information Broadcasts;

(2) Published in Coast Guard Local Notices to Mariners;

(3) Announced by the VTC in response to initial reports; and

(4) Available by calling the VTC at (504) 385–2462 or on the frequency designated in the current edition of the Berwick Bay VTS Operating Manual.

(c) Precautionary notices are given throughout the period during which the conditions in paragraph (a) of this section exist.

(d) During the period when the water level falls below 3 feet above mean sea level on the Morgan City River Gauge but remains at or above 2.5 feet, precautionary notices are issued only if the Coast Guard Captain of the Port, New Orleans, or that person's authorized representative, anticipates that the decrease in the level below 3 feet is only temporary.

§ 161.764 When limitations are in effect.

(a) The high water towing limitations are in effect when two vertically arranged red balls by day and two vertically arranged flashing white lights by night are displayed on top of the SPRR bridge.

(b) The VTC posts the visual displays under paragraph (a) of this section when the Morgan City River Gauge reads 3 or more feet above mean sea level.

(c) The VTC discontinues the visual displays under paragraph (a) of this section when the Morgan City River Gauge reads less than 3 feet above mean sea level.

§ 161.765 Notice of when limitations are in effect.

(a) In addition to the notice provided by the visual displays under § 161.764(a), notice of when high water towing limitations are in effect is—

(1) Announced during Coast Guard Marine Information Broadcasts;

(2) Published in Coast Guard Local Notices to Mariners;

(3) Announced by the VTC in response to initial reports; and

(4) Availabile by calling the VTC at (504) 385–2462 or on the frequency designated in the current edition of the Berwick Bay VTS Operating Manual.

(b) The notices under paragraph (a) of this section are given throughout the period when the limitations are in effect.

§ 161.767 General limitations.

The following general rules apply to all towing operations:

(a) Towing on a hawser in either direction is prohibited, with the exception of one self-propelled vessel towing one other vessel in a northbound direction.

(b) Tows and towing vessels must be arranged in tandem in a single string, except—

(1) One self-propelled vessel may be towed alongside a towing vessel; or

(2) One headboat being used as a bow steering unit may be located on the starboard side of the lead tow or if the lead tow is empty, on the starboard side of the loaded tow nearest the lead tow.

(c) The variation in draft and bean of the vessels that make up an integrated tow must not exceed 10% of the draft of the vessel drawing the most water and 10% of the beam of the widest vessel.

(d) All tows carrying any dangerous cargo must have at least 1,000 available

horsepower and an available horsepower to overall length (AHP/OL) ratio of at least 3 to 1, with no AHP/OL ratio requirement for tows having 3,000 or more available horsepower. All other tows must have an AHP/OL ratio of at least 1.5 to 1.

§ 161.768 Southbound limitations.

In addition to the general limitations in § 161.767, the following rules apply to southbound towing operations:

(a) A towing vessel or vessels and tow with an operable bow steering unit must not exceed an overall length of 1,180 feet.

(b) An integrated tow without an operable bow steering unit must not exceed an overall length of 750 feet.

(c) A towing vessel or vessels and tow which are not integrated and have no operable bow steering unit must not exceed an overall length of 300 feet.

§ 161.769 Northbound limitations.

In addition to the general limitations in § 161.767, the following rules apply to northbound towing operations:

(a) A towing vessel or vessels and tow must not exceed an overall length of 1,180 feet.

(b) A towing vessel or vessels and tow which are not integrated and have no operable bow steering unit must not consist of more than three vessels.

Descriptions and Geographic Coordinates

§ 161.781 VTS Area.

The VTS Area consists of the following segments of waterways:

(a) The Intracoastal Waterway Morgan City to Port Allen Alternate Route from Mile 0 to Mile 5.

(b) The Intracoastal Waterway from Mile 93 West of Harvey Lock (WHL) to Mile 99 WHL.

(c) The Atchafalya River Route from Mile 113 to Mile 122.

(d) From Bayou Boeuf (Intracoastal Waterway Mile 94.5 West of Harvey Lock) south one statute mile along Bayou Shaffer.

(e) From Berwich Lock northwest one statute mile along the Lower Atchafalaya River.

§ 161.783 Reporting points.

The reporting points are as follows:

Name	Location
Stouts Point Light	Mile 113 Atchafalaya River (AR) Route.
Long Island	Southern tip of Long Island; Mile 5 Intracoastal Waterway (ICW) Morgan City to Port Allen (MC/PA) Alternate Route.
Stouts Pass	Mile 115 AR Route.
Light "18"	Swift Ship Light; Mile 3 ICW MC/PA Alternate Route.
Bayou Teche	One mile above Berwick Lock on Lower Atchafalaya River (Bayou Teche).
Berwick Lock	Near Berwick Bay on the Lower Atchafalaya River (report only if transiting the lock).
Conrad's Point	Mile 1.5 ICW MC/PA Alternate Route.
20 Grand Point	Mile 95.5 ICW West of Harvey Lock (WHL).
Shaffer Junction	Mile 94.5 ICW(WHL) at Junction with Bayou Shaffer.
Bayou Shaffer	On Bayou Shaffer, one mile south of junction with Bayou Boeuf.
Bayou Boeuf Lock	Mile 93 ICW(WHL).
Overhead Cable	Mile 119 AR Route; Mile 96.5 ICW(WHL).
Floodways Gas Processing Plant.	Mile 99 ICW(WHL).
Atchafalaya River	Mile 122 AR Route.

B.F. Hollingsworth,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

July 16, 1982.

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BILLING CODE 4910-14-M

33 CFR Part 164

[CGD 81-081]

Electronic Position Fixing Devices

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: This proposed rule would eliminate the requirement for the complementary system to satellite navigation receivers required on vessels 1600 gross tons (GRT) or more, and allow use of a "stand alone" satellite navigation receiver. This action is being taken based on a review of 176 vessel groundings from 1977 to 1979 that shows negligible benefits accruing from the complementary system. This proposed rule would also make several minor editorial and organizational changes. Eliminating the requirement for a complementary system is expected to save up to $24 million in installation costs for both U.S. and foreign vessel owners.

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

ADDRESSES: Comments may be submitted to Commandant (G-CMC/44), U.S. Coast Guard, Washington, D.C. 20593. Comments will be available for examination at the Marine Safety Council (G-CMC/44), (CGD 81-081), Room 4402, U.S. Coast Guard Headquarters, 2100 Second St. S.W., Washington, D.C. 20593, between 8:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Falvey, Office of Marine Environment and Systems (G-WWM), U.S. Coast Guard Headquarters, 2100 Second St. SW., Washington, D.C. 20593, (202) 426-4958, between the hours of 7:00 A.M. and 3:30 P.M., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking containing requirements for carriage of electronic position fixing equipment was published on November 14, 1977 (42 FR 59012). A supplemental notice of proposed rulemaking was published on January 25, 1979 (44 FR 5312) to propose a more detailed performance standard for LORAN-C receivers, which had not been available when the original notice was published. The present rule was published as an interim final rule in the May 31, 1979 issue of the **Federal Register** (44 FR 31562) to consider an expansion of the area of applicability. A Final Rule was published without change in the January 10, 1980 issue of the **Federal Register** (45 FR 2027). The Final Rule allowed vessels having "stand alone" satellite systems that are installed before June 1, 1982 to install a complementary system by June 1, 1985, and vessels installing these systems on or after June 1, 1982 to have the complementary system installed concurrently. In the February 11, 1982 issue of the **Federal Register** (47 FR 6269), the requirement for installation of a continual tracking complementary system to satellite navigation receivers was delayed for 2 years. Those vessels having systems installed before June 1, 1984 need not install a complementary system until June 1, 1987, while those installing systems on or after June 1, 1984 must have the complementary system installed concurrently.

Drafting Information: The principal persons involved in drafting this rule are Mr. Tom Falvey, Project Manager, Office of Marine Environment and Systems, and Mr. Stanley M. Colby, Project Attorney, Office of Chief Counsel.

Discussion: The requirements for carriage of electronic position fixing devices became effective for all vessels 10,000 GRT or more on June 1, 1980. Vessels 1600 GRT but less than 10,000 GRT are required to carry this equipment effective June 1, 1982. Acceptable elecronic position fixing devices include LORAN C (Type I or II as defined in the Radio Technical Commission for Marine Services' (RTCM) Paper 12-78/DO-100, "Minimum Performance Standards (MPS) Marine LORAN C Receiving Equipment"), or a satellite navigation receiver integrated with a continual tracking, complementary system, such

as satellite-OMEGA, satellite-LORAN C, satellite-doppler, and satellite-inertial.

In response to the initial notice of proposed rulemaking for carriage of electronic position fixing equipment, forty-seven comments were received. Of those forty-seven, three contended that a satellite navigation receiver interfaced with speed and gyro inputs is normally as accurate as a satellite-OMEGA hybrid, especially at times of atmospheric disturbance, such as at dawn and dusk. The Coast Guard, in the preamble to the interim final rule, contended that in the absence of set and drift, that statement would be correct; however, in the presence of significant set and drift, a considerable error in position might develop between usable satellite passes. Acting on the assumpton that a prudent navigator would not rely on a single positioning source, and in consideration of the 3000 "stand alone" satellite navigation receivers in use in 1977, a decision was made to review the incidence of groundings of vessels equipped with satellite navigation receivers through 1981, and to then make a final determination on the acceptability of "stand alone" satellite navigation receivers. Therefore only an interim rule was published.

A review of Coast Guard files for groundings involving vessels from 1977 to 1979 was subsequently undertaken. No 1980 data has been reviewed since it has not been compiled in usable form. In the 1977 to 1979 period, some 176 groundings of vessels 1,000 GRT or more were evaluated, and none involved a grounding of a vessel using a satellite receiver. With the absence of any facts showing that navigational safety could be significantly enhanced by the requirement for a complementary system, and with the fact that this requirement may cost up to 3,000 vessel owners up to $24 million in installation costs, the Coast Guard considered it appropriate to propose that the requirement for a complementary system be eliminated.

As the requirement for the complementary system was to be implemented on June 1, 1982 for new installations, prompt action was necessary to avoid vessel owners implementing a requirement that may later be eliminated. A final rule was therefore published on February 11, 1982 (47 FR 6269) that delayed the complementary system requirements for two years. This action provided the necessary time to consider elimination of the requirements for a complementary system, and allow use of a "stand alone" satellite navigation receiver.

The Federal Radionavigation Plan

The existing regulations allow the use of an electronic position fixing system, in lieu of LORAN C, or a satellite navigation system, that meets the requirements of the U.S. "Department of Transportation (DOT) National Plan for Navigation". This report was replaced in July 1980, with the Federal Radionavigation Plan. Proposed § 164.41(c) would change the reference from the DOT National Plan for Navigation to the new Federal Radionavigation Plan. [Report No. DOD–No. 4650. 4–P, I or No. DOT–TSC–RSPA–80–16, I).

Evaluation and Certification

This proposed change would avoid an estimated 3,000 vessels carrying "stand alone" satellite navigation receivers from having to install a complementary system, such as OMEGA. At a minimum cost of about $8,000 per installation, this would result in a $24 million savings. This proposed regulation has been evaluated under Executive Order 12291 and DOT Order 2100.5 of May 22, 1980, "Policies and Procedures for Simplification, Analysis, and Review of Regulations", and has been determined to be neither major nor significant. For the reasons discussed above, a regulatory analysis has not been prepared. In accordance with Section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is certified that these proposed rules would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 164

Marine safety, Navigation (water).

PART 164—NAVIGATION SAFETY REGULATIONS

In consideration of the foregoing, it is proposed to amend 33 CFR Part 164 by adding § 164.03 and revising § 164.41 to read as follows:

§ 164.03 Incorporation by reference.

(a) Certain materials are incorporated by reference into this part with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table, "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. In that table is found the date of the edition approved, citations to the particular sections of this part where the material is incorporated, addresses where the material is available, and the date of the approval by the Director of the Federal Register. To enforce any edition other than the one listed in the table, notice of the change must be published in the **Federal Register** and the material made available. All approved material is on file at the Office of the Federal Register, Washington, DC 20408 and at Room 4402, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, D.C.

(b) The materials approved for incorporation by reference in this part are: Radio Technical Commission For Marine Services (RTCM) Paper DO–100 dated December 20, 1977.

§ 164.41 Electronic Position Fixing Devices.

(a) Each vessel calling at a port in the continental United States, including Alaska south of Cape Prince of Wales, except each vessel owned or bareboat chartered and operated by the United States, or by a state or its political subdivision, or by a foreign nation, and not engaged in commerce, must have one of the following:

(1) A Type I or II Loran C receiver as defined in § 1.2(e), meeting Part 2 (Minimum Performance Standards) of the Radio Technical Commission for Marine Services (RTCM) Paper 12–78/DO–100 dated December 20, 1977, entitled "Minimum Performance Standards (MPS) Marine Loran-C Receiving Equipment". Each receiver installed on or after June 1, 1982, must have a label with the information required under paragraph (b) of this section. If the receiver is installed before June 1, 1982, the receiver must have the label with the information required under paragraph (b) by June 1, 1985.

(2) A satellite navigation receiver with—

(i) Automatic acquisition of satellite signals after initial operator settings have been entered; and

(ii) Position updates derived from satellite information during each usable satellite pass.

(3) A system that is found by the Commandant to meet the intent of the statements of availability, coverage, and accuracy for the U.S. Coastal Confluence Zone (CCZ) contained in the U.S. "Federal Radionavigation Plan" (Report No. DOD–NO 4650.4–P, I or No. DOT–TSC–RSPA–80–16,I).

A person desiring a finding by the Commandant under this subparagraph must submit a written application describing the device to: Commandant (G–WWM), U.S. Coast Guard, Washington, D.C. 20593. After reviewing the application, the Commandant may request additional information to establish whether or not the device meets the intent of the Federal Radionavigation Plan.

Note. The Federal Radionavigation Plan is available from the National Technical Information Service, Springfield, Va. 22161, with the following Government Accession Numbers:

Vol 1, ADA 093774
Vol 2, ADA 093775
Vol 3, ADA 093776
Vol 4, ADA 093777

(b) Each label required under paragraph (a)(1) of this section must show the following information:

(1) The name and address of the manufacturer.

(2) The following statement by the manufacturer:

This receiver was designed and manufactured to meet Part 2 (Minimum Performance Standards) of the RTCM MPS for Marine Loran-C Receiving Equipment.

(Sec. 12, 92 Stat. 1477 (33 U.S.C. 1231); 49 CFR 1.46 (n)(4))

B. F. Hollingsworth,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 82-22266 Filed 8-13-82; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

[W-8-FR-2187-7]

North Dakota Oil and Gas Division, Underground Injection Control, Primacy Application

AGENCY: Environmental Protection Agency.

ACTION: Notice of public comment period and of public hearing.

SUMMARY: The purpose of this notice is to announce that: (1) The Environmental Protection Agency has received a complete application from the North Dakota Oil and Gas Division requesting approval of its Underground Injection Control program; (2) the application is available for inspection and copying; (3) public comments are requested; and (4) a public hearing will be held if sufficient public interest is shown.

This notice is required by the Safe Drinking Water Act as a part of the response to the States complying with the statutory requirement that there be an Underground Injection Control program in designated States.

The proposed comment period and public hearing will provide EPA the breadth of information and public opinion necessary either to approve, disapprove, or approve in part and disapprove in part the application from the North Dakota Oil and Gas Division to regulate Class II oil and natural gas related injection wells.

DATES: Requests to present oral testimony should be filed by September 7, 1982. A public hearing will be held September 14, 1982, at two sessions: 10:00 a.m. and 7:00 p.m. All comments must be received by September 17, 1982.

ADDRESSES: Comments and requests to testify may be mailed to Wilma Martin, Drinking Water Branch (8WM-DW), Environmental Protection Agency, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295. Copies of the application and pertinent material are available between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following locations:

Environmental Protection Agency, Region VIII, Drinking Water Branch, 1860 Lincoln Street, Sixth Floor, Denver, Colorado 80295; (303) 837-2731

North Dakota Industrial Commission, Oil and Gas Division, 900 E. Boulevard, Bismarck, North Dakota 58565; (701)

North Dakota State Department of Health, Missouri Office Building, 1200 Missouri Avenue, Bismarck, North Dakota 58505; (701) 224-4538

The Hearing will be held in the Legislative Committee Room, Judicial Wing, State Capitol Building, Bismarck, North Dakota.

FOR FURTHER INFORMATION CONTACT: Patrick A. Crotty, Chief, or Michael G. Kuntz, Hydrologist, Colorado/North Dakota/Wyoming Section, Drinking Water Branch, Environmental Protection Agency, Region VIII, 1860 Lincoln Street, Denver, Colorado 80295; (303) 837-2731.

SUPPLEMENTARY INFORMATION: This application from the North Dakota Oil and Gas Division is for the regulation of all Class II oil and natural gas injection wells in the State. The application includes a description of the State Undeground Injection Control program, copies of all applicable regulations and forms, a statement of legal authority, and a memorandum of agreement between the North Dakota Oil and Gas Division and the Region VIII office of the United States Environmental Protection Agency.

List of Subjects in 40 CFR Part 123

Hazardous materials, Indians—lands, Reporting and record keeping requirements, Waste treatment and disposal, Water pollution control, Water Supply, Intergovernmental relations, Penalties, Confidential business information.

Dated: August 6, 1982.

Frederic A. Eidsness, Jr.,

Acting Assistant Administrator for Water.

[FR Doc. 82-22252 Filed 8-13-82; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 4, 26, 35, 78, 97, 109, 167, 185, and 196

[CGD 82-069]

Casualty Reporting Requirements

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the casualty reporting requirements to eliminate certain costs associated with the repair of a vessel sustaining damage as the result of a marine casualty. The existing requirements require a report to be made when vessels sustain damage of $25,000. This cost includes the cost of salvage, gas freeing and drydocking. This proposed rulemaking would delete these items, based on the reevaluation of comments previously received and on a recommendation from the Towing Safety Advisory Committee (TSAC). The result of this revision will reduce the number of reports submitted while still providing the Coast Guard with sufficient marine casualty information to allow it to fulfill its statutory obligations.

DATES: Comments on the proposed regulation must be received on or before September 30, 1982.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/44), Room 4402, U.S. Coast Guard Headquarters, 2100 Second Street, S.W. Washington, DC 20593.

FOR FURTHER INFORMATION CONTACT: LT C. V. Mosebach, Office of Merchant Marine Safety (G-MMI-1/24), Room 2407, U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC 20593; (202) 426-6251, 7:30 to 3:30 Monday through Friday.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this rule are LT C. V. Mosebach, Project Manager, Office of Merchant Marine Safety and LCDR W. B. Short, Project Counsel,Office of Chief Counsel.

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments. Written comments should include the docket number (CGD 82-

069), the name and address of the person submitting the comments and the specific section of the proposal to which each comment is addressed. Persons desiring acknowledgment that their comment has been received should enclose a stamped self-addressed post card or envelope. All comments received will be considered before final action is taken on this proposal. No public hearings are planned, but they may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentation will aid the rulemaking process.

Background

Prior to January 1, 1981, the monetary damage reporting criteria contained in 46 CFR 4.05–1(a) (and also in the specific regulation subchapters for various vessel types) required that the Coast Guard be notified of any marine casualty where the actual physical damage to property exceeded $1500. On January 1, 1981 an interim final rule, which had been published on November 24, 1980, became effective and amended these criteria by increasing the monetary threshold to $25,000 and by specifying that salvage, gas freeing and drydock costs were to be included in the damage figure. The latter portion of this revision was intended to provide a more definitive understanding of the phrase "actual physical damage" in order to achieve more uniform application. Prior to publishing the interim final rule, the Coast Guard had received comments from the public with respect to eliminating the costs of gas freeing. At that time, this suggestion was not concurred with because the Coast Guard felt that the need for gas freeing would be indicative of the seriousness of a casualty.

Subsequent to this action, the Towing Safety Advisory Committee (TSAC) was created to advise the Coast Guard concerning marine safety matters. TSAC evaluated this revision and recommended that the Coast Guard reconsider the inclusion of the costs of gas freeing and drydocking. In addition, although the current rule does not require cleaning costs to be included, based on reports and comments received from TSAC this was a matter of confusion within the industry.

The Coast Guard has reconsidered the inclusion of these costs as a measure of damage and has now determined that none of these items have a direct relationship to the causes of a casualty or to the extent of damage. Also, these costs can vary widely for casualties involving similar damage. Depending on the cargo carried and other circumstances, they may range from nonexistent to costs exceeding the direct cost of repairing the damage incurred. This distorts the basis for using a monetary criteria to establish a reporting threshold. Consequently, the desired objective of more uniform application can be better achieved by eliminating consideration of the costs of cleaning, gas freeing and drydocking.

As part of this reevaluation, it was noted that salvage costs are also primarily dependent on circumstances not directly related to the causes of the casualty or the extent of damage. Therefore, this proposal would also eliminate the cost of salvage as a reporting criterion.

Although this change will not eliminate a significant portion of the reports currently being submitted, it will make the data base more consistent and reduce the reporting burden, particularly for barge operations.

Regulatory Analysis

This revision has been reviewed under the provisions of Executive Order 12291 and has been determined not to be a major rule. In addition, this regulation is considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 or 5–22–80). The only impact of this change is to reduce the number of reports submitted by an estimated 5%. Therefore, in accordance with Section 605(b) of the Regulatory Flexibility Act (94 Stat. 1164), it is certified that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Energy/Environmental Impact

It has been determined that there will be no impact on the environment or upon energy use as a result of this revision.

(46 U.S.C. 239, 46 U.S.C. 375, 33 U.S.C. 361, 49 U.S.C. 1655(b)(1), and 43 U.S.C. 1348)

List of Subjects

46 CFR Part 4

Administrative practice and procedure, Investigations, Marine safety accidents, National Transportation Safety Board, Reporting requirements.

46 CFR Part 26

Marine Safety, Penalties, Reporting requirements, Uninspected vessels, Navigation (water), Passenger vessels, Fishing vessels, Tow boats.

46 CFR Part 35

Hazardous materials transportation, Marine safety, Tank vessels, Barges.

46 CFR Part 78

Marine safety, Passenger vessels, Penalties, Reporting requirements, Navigation (water).

46 CFR Part 109

Reporting requirements, Vessels, Outer Continental Shelf, Marine safety, Accidents.

46 CFR Part 167

Fire prevention, Reporting requirements, Marine safety, Nautical school ships.

46 CFR Part 185

Marine safety, Small passenger vessels, Reporting requirements, Navigation (waters).

46 CFR Part 196

Marine safety, Oceanographic vessels, Reporting requirements.

In consideration of the foregoing, Title 46, Code of Federal Regulations is proposed to be amended as follows:

PART 4—MARINE INVESTIGATION REGULATIONS

1. By revising § 4.05–1(f) as follows:

§ 4.05–1 Notice of marine casualty.

* * * * *

(f) An occurrence not meeting any of the above criteria but resulting in damage to property in excess of $25,000. Damage cost includes the cost of labor and material to restore the property to the service condition which existed prior to the casualty, but does not include the cost of salvage, cleaning, gas freeing, drydocking or demurrage.

PART 26—OPERATIONS (UNINSPECTED VESSELS)

2. By revising § 26.08–1(f) as follows:

§ 26.08–1 Notice of marine casualty.

* * * * *

(f) An occurrence not meeting any of the above criteria but resulting in damage to property in excess of $25,000. Damage cost includes the cost of labor and material to restore the property to the service condition which existed prior to the casualty, but does not include the cost of salvage, cleaning, gas freeing, drydocking or demurrage.

PART 35—OPERATIONS (TANK VESSELS)

3. By revising § 35.15–1(a)(6) as follows:

§ 35.15-1 Notice of casualty and voyage records.

(a) * * *

(6) An occurrence not meeting any of the above criteria but resulting in damage to property in excess of $25,000. Damage cost includes the cost of labor and material to restore the property to the service condition which existed prior to the casualty, but does not include the cost of salvage, cleaning, gas freeing, drydocking or demurrage.

* * * * *

PART 78—OPERATIONS (PASSENGER VESSELS)

4. By revising § 78.07-1(a)(6) as follows:

§ 78.07-1 Notice of marine casualty.

(a) * * *

(6) An occurrence not meeting any of the above criteria but resulting in damage to property in excess of $25,000. Damage cost includes the cost of labor and material to restore the property to the service condition which existed prior to the casualty, but does not include the cost of salvage, cleaning, gas freeing, drydocking or demurrage.

* * * * *

PART 97—OPERATIONS (CARGO AND MISCELLANEOUS VESSELS)

5. By revising § 97.07-1(a)(6) as follows:

§ 97.07-1 Notice of marine casualty.

(a) * * *

(6) An occurrence not meeting any of the above criteria but resulting in damage to property in excess of $25,000. Damage cost includes the cost of labor and material to restore the property to the service condition which existed prior to the casualty, but does not include the cost of salvage, cleaning, gas freeing, drydocking or demurrage.

* * * * *

PART 109—OPERATIONS (MOBILE OFFSHORE DRILLING UNITS)

6. By revising § 109.411(a)(6) as follows:

§ 109.411 Notice of marine casualty.

(a) * * *

(6) An occurrence not meeting any of the above criteria but resulting in damage to property in excess of $25,000. Damage cost includes the cost of labor and material to restore the property to the service condition which existed prior to the casualty, but does not include the cost of salvage, cleaning, gas freeing, drydocking or demurrage.

* * * * *

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

7. By revising § 167.65-65(a)(6) as follows:

§ 167.65-65 Notice of marine casualty and voyage records.

(a) * * *

(6) An occurrence not meeting any of the above criteria but resulting in damage to property in excess of $25,000. Damage cost includes the cost of labor and material to restore the property to the service condition which existed prior to the casualty, but does not include the cost of salvage, cleaning, gas freeing, drydocking or demurrage.

* * * * *

PART 185—OPERATIONS (SMALL PASSENGER VESSELS

8. By revising § 185.15-1(f) as follows:

§ 185.15-1 Notice of marine casualty.

* * * * *

(f) An occurrence not meeting any of the above criteria but resulting in damage to property in excess of $25,000. Damage cost includes the cost of labor and material to restore the property to the service condition which existed prior to the casualty, but does not include the cost of salvage, cleaning, gas freeing, drydocking or demurrage.

PART 196—OPERATIONS (OCEANOGRAPHIC VESSELS)

9. By revising § 196.07-1(a)(6) as follows:

§ 196.07-1 Notice of marine casualty.

(a) * * *

(6) An occurrence not meeting any of the above criteria but resulting in damage to property in excess of $25,000. Damage cost includes the cost of labor and material to restore the property to the service condition which existed prior to the casualty, but does not include the cost of salvage, cleaning, gas freeing, drydocking or demurrage.

* * * * *

(Sec. 10, 18 Stat. 128 (33 U.S.C. 361); R.S. 4450, as amended (46 U.S.C. 239); R.S. 4405 (46 U.S.C. 375); 80 Stat. 938 (49 U.S.C. 1655(b)(1); 49 CFR 1.46(b))

L. N. Hein,

Captain, U.S. Coast Guard, Acting Chief, Office of Merchant Marine Safety.

July 29, 1982.

[FR Doc. 82-22284 Filed 8-13-82; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 5

[Gen. Docket No. 82-469; FCC 82-330]

Amendment To Diminish Restrictions on the Licensing and Use of Stations in the Experimental Radio Service (Other Than Broadcast)

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend Part 5 of its Rules and Regulations to eliminate unnecessary restrictions on the licensing and use of stations in the Experimental Radio Service.

DATES: Comments are due on or before September 20, 1982 and replies on or before October 11, 1982.

ADDRESS: Federal Communications Commission 1919 M Street, NW. Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT:

H. Frank Wright, Frequency Liaison Branch, Office of Science & Technology, Washington, D.C. 20554, (202) 653-8137

John R. Williams, Technical Planning Branch, Office of Science & Technology, Washington, D.C. 20554, (202) 632-7073

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 5

Developmental, Experimental radio, Research.

I. General Information

Adopted: July 22, 1982.

Released: August 5, 1982.

1. Notice is hereby given of proposed rulemaking in the above entitled manner.

2. The purpose of this Notice is to present for public comment certain amendments which we are proposing to make to Part 5 of our Rules and Regulations. The detailed rule changes being proposed are set forth in the Appendix. The substantive changes and our reasons therefore, are discussed in the text, below. Interested parties are invited to comment on the merits of our proposals and on the soundness of our reasoning. Additional or alternative proposals, which it is believed will help us better to accomplish our stated regulatory objectives, may also be filed. While we are thus encouraging a broad based discussion of alternatives, we are also requesting thoughful analysis and attention to details so that final rules

may be adopted without the need for subsequent notice and comment proceeding.

3. Our objectives in this proceeding are to streamline Part 5 and make it more efficient and less burdensome for the Commission as well as for the public. More particularly, we are proposing to delete rules which appear no longer useful and to eliminate or reduce regulatory restrictions in Part 5 which appear to create burdens in excess of benefits. In addition, those aspects of Part 5 regulation which we believe produce positive benefits are reorganized and re-written for greater clarity. The net effect of both the substantive and editorial changes is reflected in the rules set out in the Appendix.

4. Our proposals in this Notice are the result of studies conducted by our staff and undertaken on our own initiative as part of our continuing agency-wide regulatory review. As this is the public's first exposure to these proposals (there were no petitions) and because of our desire for thoughful analysis, we are allowing a somewhat longer period than normal for the filing of written comments and replies. The precise deadlines for these submissions are set forth in the last section of this Notice.

II. Summary of Notice and Proposals

5. In this section we briefly outline the structure of the Notice itself as well as the more important rule changes being proposed. The section immediately following gives a brief background discussion of Part 5, its regulatory purpose, scope and structure; Section IV discusses in detail our specific rule making proposals and reasons therefore; and Section V covers administrative and statutory matters relevant to this proceeding.

6. The more substantive aspects of our proposed changes to Part 5 can be summarized as follows:

- Elimination of mandatory routine reporting for certain types of experimental authorization;
- Elimination of certain technical regulations pertaining to emissions;
- Elimination of the requirement for the filing of a rule making petition for experimentation of a developmental nature;
- Elimination of certain rule requirements pertinent to the operation of experimental stations and to the qualification of operators;
- Provision for the conduct of market trials under Part 5 experimental authorization.

7. The first four of the above-listed proposals are essentially relaxations of existing Part 5 regulations. The last proposal represents an expansion of the scope of Part 5 developmental authority beyond the purely technical experimentation for which it has traditionally been employed. As explained in more detail below, these changes in Part 5 will, we believe, result in a lowering of regulatory barriers to the development of new and innovative uses of the spectrum while retaining essential regulatory controls mandated by law.

III. Purpose and Scope of Part 5

8. In section 303(g) of the Communications Act of 1934, as Amended, the Commission is authorized to provide for experimental use of frequencies and is charged with encouraging the larger and more effective use of radio in the public interest. In the Commission's rules, this mandate is manifest perhaps most clearly in Part 5 which provides specifically for the experimental use of radio. The primary purpose of Part 5 is to provide for the experimental use of radio frequencies and development of techniques and systems that are not permitted under existing service rules.

9. Other parts of the Commission's rules contain sections that allow experimentation and development of techniques, but are restricted to applicants that are eligible to apply for a license in that particular service and on frequencies that are allocated to that particular service. Part 5 was developed to take care of the applicant who wants to experiment but does not meet one or both of the above conditions. An example would be an equipment manufacturer who wishes to develop equipment for use in the Common Carrier Service. Since it cannot meet the eligibility requirements to be a common carrier, it cannot apply under that section.

10. Some other uses that are presently covered under Part 5 are (a) experimentation for purely scientific purposes, (b) development of equipment under Federal Government or foreign contract or for export, (c) communications essential to research projects, (d) technical demonstration of equipment or techniques, (e) testing of equipment in connection with production or type acceptance, approval or certification, (f) field strength surveys or demonstration of equipment to prospective purchasers, (g) development of radio technique, equipment, operational and/or engineering data related to an existing or proposed radio service.

11. In addition to its mandate to encourage new uses of spectrum, the Commission has other madnates which require it to maintain U.S. control over all interstate and foreign channels of communication (section 301) and to manage the radio spectrum resource (sections 302 and 303). As the central manager of the radio spectrum for non-Federal uses, the commission is responsible for controlling interference among the various civilian uses, for determining priorities for access to the spectrum and for ensuring that the resource is not used in wasteful manner.

12. For most of the regular (non-experimental) services which we license, our spectrum management responsibilities are met through regulations which prescribe in considerable detail the nature of communication permitted, the technical parameters of systems and stations, conditions of channel loading, eligibility of licensees, etc. In contrast, Part 5 is less restrictive in these areas because of the desire to encourage greater flexibility and innovation. However, other kinds of regulations are employed in Part 5 to carry out our spectrum management responsibilities. For example, interference is controlled by a rule which places Part 5 stations on a secondary basis to regularly authorized stations, i.e., an experimental station may not interfere with, and is entitled to no interference protection from, regularly licensed stations. Also, an experimental license is granted for a shorter than normal term (2 years or less) and is subject ot immediate revocation without the formal hearing required in regular services.

13. Other special regulations applicable to Part 5 licenses include (1) the licensing of station operators; (2) the filing of rule making petitions in justification for a license to operate a station for development of a new service or use for which spectrum is not allocated; and (3) the filing of periodic reports setting forth the status and results of experimentation conducted under certain categories of Part 5 licenses. Also, an experimental station cannot, without special permission, retransmit the signal of other stations, nor transmit programs intended for public reception. Finally, while not as technically restrictive as other services, Part 5 does impose some restrictions on the frequency bands which may be used and on certain of the technical parameters of stations.

14. These restrictions in Part 5 were imposed to provide what was deemed to be the necessary degree of control to carry out our statutory responsibilities, principally those pertaining to spectrum management considerations. It would appear that all, or most, of these

regulations do have the effect of increasing such control. However, in so doing, they also inevitably reduce licensee flexibility (and hence the opportunity for innovation) and impose additional costs on us and our licensees. The question before us, then, is whether the benefits of control provided by these rules justify their costs. For reasons explained more fully in the following section, we believe many of these regulations can be made less restrictive and therefore less costly without materially reducing our ability to manage the spectrum or otherwise carry out our statutory responsibilities. The benefits of eliminating such regulations include reduced burdens for licensees as well as ourselves and greater opportunity for innovative use of the spectrum.

IV. Proposed Deregulatory Changes

Reporting Requirements

15. For most classes of experimental operation authorized under Part 5, our rules require that a report be filed at renewal time, and at other times during the license term as we may specify, setting forth detailed information on the experiments conducted and the results obtained. The filing of such reports is intended to serve two regulatory purposes: (1) To provide us with evidence that the Part 5 license is not being abused, i.e., that the authorized facilities are being used for legitimate experimentation, and (2) to alert us to new technological developments.

16. However, it would appear that the possibility of abuse of the experimental licensing process is adequately controlled by other Part 5 rules, most notably the requirement for a narrative statement in the initial application explaining the type of experimentation contemplated and its purpose. It is not necessary, we feel, for the licensee to report the kind of details presently required in order to obtain a renewal. This requirement creates substantial costs for licensees in preparing such reports and for us in reviewing and storing them. Storage problems are also compounded by the proprietary nature of the information often contained in these reports, which must be withheld from public access. A possibly greater indirect cost, however, is the risk, or perception of risk, by licensees that proprietary information filed in these reports may find its way into the hands of competitors, despite our best efforts to protect it. How much this concern may deter innovation is uncertain, but it could be an important factor.

17. In any case, we do not believe the automatic submission of proprietary information or the filing of detailed reports is necessary or desirable under our experimental rules. We are therefore proposing to replace the automatic reporting requirement with a rule requiring a report only upon specific request, as specified in the authorization document.

Technical Standards

18. Our existing regulations in Part 5 specify that an experimental station shall have a frequency tolerance no greater than that of regularly authorized stations operating within the same frequency range as the experimental station. They also specify how the emission power must roll-off as a function of frequency within the assigned bandwidth of an experimental station as well as beyond the limits of its assigned bandwidth. Departures from the standards are permitted, but only upon a special showing of need.

19. As indicated above, one of the major purposes of Part 5 is to encourage the development of innovative radio system designs, techniques and uses. To serve this objective, our rules in Part 5 should provide as much flexibility as possible in the selection and optimization of system design parameters, including frequency tolerance and in-band power roll-off characteristics. If a particular experimental system being proposed raises concerns about harmful interference to regular services, we can and do impose technical or operational restrictions on that particular license to alleviate the concern. Also, if interference actually occurs, the offending experimental station must shut down immediately and is responsible for correcting the interference.

20. With these precautions and remedies available, it does not appear that the imposition of *a priori* technical standards to experimental stations is either necessary or desirable. Consequently, we are proposing to delete the present Part 5 standards on frequency tolerance and in-band power roll-off. However, applicants would be required to specify those parameters in the technical section of their applications, and we would reserve the right to impose restrictions on these as well as other system parameters as may be necessary on a case-by-case basis to control interference to regular services.

Operating Requirements

21. Part 5 also contains a number of regulations pertaining to the operation of experimental stations. For example, there are rules specifying the technical qualification of station operators; rules requiring that stations not be installed in vehicles other than those owned by the licensee; rules requiring that licensees possess equipment for monitoring their frequencies to ensure they are unoccupied before transmitting, etc. The obvious intent of these rules is to provide additional measures of interference protection to regularly authorized stations. However, the most important interference safeguards, and ones which we propose to retain, are the secondary status of experimental stations and the careful coordination which is carried out as part of the licensing process. Through this coordination process, each application for an experimental station is examined by the Commission (and by the Interdepartment Radio Advisory Committee if proposing to use frequencies on which Governments station are authorized) to determine the potential of the proposed experiment to cause harmful interference to regularly authorized stations. As a result of this examination it may be necessary to impose certain specific limitations on the experimental station or its operation in order to reduce the potential for interference to an acceptable level. These restrictions become conditions incorporated in the experimental license. Also, despite these precautions, if interference should be caused to regular services, the license requires the immediate shut-down of the experimental station and assigns responsibility to the experimental station licensee for correcting the cause of the interference.

22. It would seem, then, that secondary status and prior coordination, coupled with the requirement for immediate shut down if interference results, provide us with effective control over interference from experimental facilities. The additional operating precautions in Part 5, as discussed above, would thus have the potential to increase costs and reduce flexibility for licensees with no commensurate benefits in controlling interference. We are therefore proposing to eliminate these rules. We would emphasize, however, that this action would not relieve licensees of the responsibility of maintaining control over their stations. It would, however, give them more latitude in how they accomplish it. This could be a significant benefit by allowing licensees to avoid purchasing special equipment, hiring licensed operators, etc., where less costly means exist for controlling their interference.

Petitions for Rulemaking

23. Under existing Part 5 rules, anyone proposing to experiment with a new use of radio for which operating rules have not been promulgated or proposed, or with the extension of an existing use into a new frequency band, must accompany his application with a petition requesting that the rules be amended to provide for the proposed use on a regular basis. The justification for this petitioning requirement is the desire to begin the public rulemaking process as early as possible in anticipation of new uses or technologies, the regular authorization of which may require changes in spectrum allocations or other Commission policy. The filing of a petition alerts the Commission to such potential issues and opens an official record for public discussion and comment. Since it has not been our practice to place applications for experimental licenses on Public Notice, the filing of a petition in concert with the developmental license application has served that purpose. Furthermore, the petition for ruling making contains information not normally required in the license application, which may help us reach a public interest finding on the application in some instances.

24. On the other hand, a petition filed at the onset of a developmental program may be premature and the information contained therein of limited value to us for planning purposes. It can also lead to wasteful duplication of effort. The developmental program may, in fact, disprove the feasibility of a proposed use or result in major modifications in technical parameters or spectrum requirements, rendering the petition obsolete. If a petition is amended to reflect new directions in the developmental program, a new public notice is required followed by additional comments from interested parties on issues which may themselves subsequently dissolve because of normal evolutionary changes. Also, as with the reporting discussed earlier, the requirement for the filing of a petition and the public disclosures that are involved at too early a time may, for competitive reasons, discourage companies from participating in the develolpment of new uses of radio.

25. Because of the restrictive nature of an experimental license (short term, secondary nature, etc.) licensees engaged in developmental activities must eventually request and be granted the necessary rule changes before their new product or service can effectively be brought into the marketplace. The licensee would therefore appear to have a natural incentive to file a rulemaking petition at the appropriate time in the developmental process, without our requiring it by rule.

Market Trials

26. One class of experimentation which is not now provided for under Part 5, but which can provide vital information to both the developer of a new service or divice and the Commission, is a market trial. In such trials a new service or device would be offered to prospective users in limited quantity and/or for a limited period of time to determine the sensitivity of demand to various prices and quality levels. Such sensitivity information would be valuable to licensees in optimizing the design of their proposed systems or services and to us in setting spectrum efficiency standards and estimating spectrum allocation requirements.

27. Under present procedures, however, market trials are not normally permitted until spectrum has been allocated, standards adopted, and other regulatory issues resolved through public rulemaking. Underlying this policy is the concern that allowing a developer of a new use or system to invest a substantial amount of money or to involve the public directly in a market experiment would reduce the Commission's ability to curtail the operation, to relocate it to another part of the spectrum or to otherwise modify it if such action became necessary for valid public interest reasons. Such regulatory control, it is reasoned, should not be relinquished without the test of a full public rulemaking proceeding.

28. More particularly, there is the concern that market trials may involve investments by members of the public who, unlike the licensee, may not be fully aware of the risks associated with an experimental license. If, for expample, a market trial involved the purchase by members of the public of expensive radio equipment, the sudden termination of the experiment by the Commission could cause undue financial hardship to those individuals.

29. It is clear that the proper exercise of our regulatory mandate requires that the *regular* authorization of any new use or system which does not conform to our existing rules must be preceded by a public rulemaking or appropriate rule waiver action. However, a market trial, as we envision it here, would not be a regular authorization. As an experimental grant, a market trial under Part 5 would be subject to the same caveats which now apply to all Part 5 licenses, plus others which we will discuss in the next paragraph. These conditions would be stated clearly in the rules and would appear on the face of the license itself. Acceptance of the license would constitute acceptance of these conditions by the licensee. If a licensee, having full knowledge of these conditions, wishes to risk his capital in a market trial, he should be allowed that freedom.

30. To help meet the concern regarding potential financial risk to members of the public, we are proposing to require that all transmitting facilities authorized in the experimental license as well as all receiving equipment (including antennas) involved in the market trial be owned by the licensee. The licensee could rent or lease these facilities to members of the public, but would have to retain ownership. This would reduce potential adverse effects on members of the public in the event of termination of the license. It would not, however, comletely eliminate such potential harm in all conceivable cases, as there may be other facilities used in conjunction with the radio equipment, which users might need or want to purchase. Thus we are also proposing to require licensees engaged in market trials to inform participating members of the public that their use of the radio facilities provide by the licensee is subject to immediate termination without advance notice and to caution against too great a reliance on the continued availability of that equipment or investment in peripheral facilities. We believe these two requirements would adequately protect members of the public against potential financial loss due to precipitous termination of a market trial, without being so constraining as to prevent meaningful results.

31. Therefore, we are proposing to extend the scope of Part 5 to include the authorization of market trials. This would be accomplished by modification of the section in Part 5 dealing with the rendering of a communications service and by the inclusion of a specific category of use for market experimentation. However, an applicant for a market experiment would be required to give a full explanation of the nature of the service or device to be tested and the scope of the experiment. Such applications would be examined and coordinated on the basis of potential interference to regular services. A determination would also be made that the proposed service or device is not intended to be used for illegal activities and would not otherwise be detrimental to public well-being.

32. Also, like other Part 5 licenses, a license for a market experiment would

be issued for a maximum period of 2 years; would be subject to technical or operating restrictions as may be necessary on a case-by-case basis to control potential interference; and would be conditioned as secondary to regular services in the event of harmful interference. It would also contain language requiring the licensee to maintain ownership of any transmitting or receiving equipment used in the experiment by members of the public and would require the licensee to inform anyone who participates in the experiment that the authorization of the service or device is strictly temporary and experimental and is subject to immmediate termination in the event of interference or as the Commission may otherwise deem necessary in the public interest. The size and scope of the experiment would also be subject to limitations by us on a case-by-case basis to ensure that it is held to the minimum size necessary for a meaningful market test. This limitation could take many forms, including limitations on the numbers of transmitters and receivers involved, geographical areas to be covered, times of operation, etc. The keeping of special records and the filing of status reports may also be required, again on a case-by-case basis depending on the nature and scope of the experiment and concerns we may have about potential interference. Comments and alternatives regarding these proposed market trial rules are especially invited.

V. Rules Change Details and Administrative Matters

33. To eliminate unnecessary technical standards, Section 5.103 is proposed to be deleted and replaced with a more general paragraph which references Part 2 in regard to emission limitations. The present paragraph goes into detail as to the level of radiated power in the authorized bandwidth. Since this present paragraph cannot hope to cover every type of experiment it is better to go back to Part 2 for reference in calculating bandwidth. Also §§5.104, 5.105, 5.106 and 5.107 are proposed to be deleted and replaced with a new paragraph. These Sections detail the modulation requirements, power and antenna heights, transmitter control requirements and required transmitter measurements. Deleting these sections, as stated in the new paragraph, would not relieve the licensee of the responsibility of maintaining control of his station; it just gives him more latitude in how he accomplishes it.

34. With regard to operating requirements, § 5.151(b) is proposed to be rewritten in a more positive form, and § 5.154 is proposed to be deleted. These changes leave the responsibility of selecting the proper means of control of the station to the licensee. Section 5.155 is proposed to be rewritten to eliminate operator licensing for certain types of stations. Again, the responsibility of ensuring that stations are operated by qualified people is left to the licensee. Section 5.156 would also be deleted.

35. In regard to reporting requirements, we are proposing to add a paragraph saying that no report is required unless specifically stated in the authorization or unless requested. This approach gives the Commission latitude in determining, whether a report on a certain experiment is likely to contain information which the Commission would like to receive. Under the present reporting procedure, many reports are routinely filed which have no useful purpose.

36. To eliminate the petitioning requirement and permit market trials, we are proposing to combine E-Research and Subpart F-Developmental all under one subpart. The petitioning requirement is the primary distinction between the regulations in these two subparts, and since that requirement is being eliminated we find it unnecesary to maintain separate subparts. We propose to list under the new combined subpart all of the categories of experiments presently included under Subparts E and F to serve as a guide to applicants in determining if their proposed uses are licensable under Part 5. However, two new categories are being added: the first is a statement that this list is not all inclusive and that we will entertain other types of experiments which may not fit perfectly into one of the other categories listed; and the second is a new category of experiment to cover market trials.

37. As an administrative matter, we are also proposing to eliminate the Form 440A which applicants must now file if requesting the renewal of a station license used to fulfill a contract with an agency of the United States Government. This additional one page form entitled "Supplemental Information for Applications in the Experimental Radio Service Involving Government Contract" is used for coordination with the government agency involved for confirmation of the contract. The main data contained on this form which are not part of the main application are the contract number and the name of the contracting agency. This information is still required, but can be provided more efficiently if made a part of the license application form, i.e., FCC Form 442.

38. Pursuant to § 605(b) of the Regulatory Flexibility Act, the Commission certifies that the proposed amendments to Part 5 of the rules will not have a significant impact on a substantial number of small businesses. In our experience small entities are not the major Part 5 users and while relaxation of the Rules may encourage some more applications by smaller businesses it is not expected to be substantial. In light of probable costs, the proposal to permit market experiments in particular will likely be of benefit only to larger entities.

39. The proposed amendments to the Commission's rules to set forth in the attached Appendix are issued under the authority contained in section 4(i) and 303(a), (b), (g) and (f) of the Communications Act of 1934, as amended. In accordance with the applicable procedures set forth in § 1.415 of the regulations, interested persons may file comments on or before September 20, 1982 and reply comments on or before October 11, 1982. All relevant and timely comments will be considered. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. A summary of these Commission procedures governing *ex parte* presentations informal rulemaking is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C. 20554.

40. For purposes of this non-restricted notice and comment rulemaking proceedings, members of the public are advisd that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rulemaking until the time a Public Notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adoted by the Commission, whichever is earlier. In general, an *ex parte* presentation, addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy of the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on it face

that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, 1.1231 of the Commission's rules, 47 CFR § 1,1231.

41. The rule amendments proposed in this proceeding, while expected to benefit licensees under the experimental radio service as described above, will not result in a significant economic impact on any person or entity. Therefore, the Commission has determined that Sections 603 and 604 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) do not apply to this rule making proceeding, because the rules will not, if promulgated, have a significant economic impact on a substantial number of small entities.

42. In accordance with provisions of section 1.419 of the regulations, an original and five copies of all commnets, reply comments, pleadings, briefs, and other documents shall be furnished the Commission. To obtain the widest possible response in this proceeding, informal comments (without extra copies) will be accepted, but these commnents should make specific reference to this proceeding. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room located at its headquarters at 1919 M Street, NW., Washington, D.C. 20554. For further information contact Frank Wright or John R. Williams at (202) 632–7073.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission,

William J. Tricarico,

Secretary.

Appendix

PART 5—EXPERIMENTAL RADIO SERVICES (OTHER THAN BROADCAST)

It is proposed that 47 CFR, Part 5 be amended as follows:

§ 5.2 [Removed]

1. Sections 5.2 is removed.

§ 5.3 [Amended]

2. Sections 5.3(e) and (f) are removed.

§ 5.51 [Amended]

3. Replace the phrase "Experimental Radio Services" with the phrase "Experimental Radio Service" in § 5.51(a).

§ 5.53 [Amended]

4. Replace the phrase "Experimental Services" with the phrase "Experimental Radio Service" in § 5.53(a).

§ 5.55 [Amended]

5. Section 5.55(d)(2) is removed.

§ 5.57 [Amended]

6. Section 5.57(b)—Applications involving government contracts, is revised to read:

* * * * *

(b) In addition to the requirements of paragraph(a), if the authorization is to be used for the purpose of fulfilling the requirements of a contract with an agency of the United States Government, the applicant should submit the name of the contracting agency and the contract number.

7. Section 5.57(c)(2) is removed.

8. Replace the phrase "Expertimental Service "(Research)" with the phrase "Experimental Radio Service" in § 5.57(d).

§ 5.62 [Amended]

9. Replace the phrase "experimental radio services" with the "Experimental Radio Service" in § 5.62.

§ 5.63 [Amended]

10. Replace the phrase "Experimental Radio Services" with the phrase "Exerimental Radio Service" in § 5.63(a) and (c).

§ 5.66 [Amended]

11. Replace the phrases "experimental services, " with the phrase "Experimental Radio Service," in §5.66.

§ 5.67 [Amended]

12. Replace the phrase "experimental services" with the phrase "Experimental Radio Service" in § 5.67(a).

13. Section 5.67(c), is revised to read:

* * * * *

(c) The frequencies available for use in the Experimental Radio Service are set forth in paragraph 5.203.

§ 5.68 [Amended]

14. Replace the phrase "experimental services" with the phrase "Experimental Radio Service" in § 5.68.

15. Section 5.101—*Frequency stability,* is revised to read:

§ 5.101 Frequency stability.

If an applicant proposes to use a frequency tolerance greater than the tolerance set forth in the rules governing the service to which the frequencies are assigned in the Table of Frequency Allocations of Part 2 of this chapter, the frequency tolerance should be provided as part of the filing in the application for a station license.

§ 5.102 [Amended]

16. Replace the phrase "Experimental Radio Services" with the phrase "Experimental Radio Service" in § 5.102.

17. Section 5.103—*Emission limitations,* is revised to read:

§ 5.103 Emission limitations.

Each authorization issued to a station operating in this service will show us the prefix to the emission classification, a figure specifying the maximum authorized bandwidth in kilohertz to be occupied by the emission. This bandwidth should be determined in accordance with § 2.202 of Part 2 of this Chapter.

§ 5.104 [Removed]

18. Section 5.104 is removed.

§ 5.105 [Removed]

19. Section 5.105 is removed.

20. Section 5.106—*Transmitter control requirements,* is revised to read:

§ 5.106 Transmitter control requirements.

Each licensee shall be responsible for maintaining control of the transmitter authorized under its station authorization. This includes both ensuring that transmissions are in conformance with the operating characteristics prescribed in the station authorization and that the station is operated only by persons duly authorized by the licensee.

§ 5.107 [Removed]

21. Section 5.107 is removed.

§ 5.151 [Amended]

22. Section 5.151(a)—General limitations on use, is revised to read:

(a) The following transmission limitations are applicable to all classes of stations in the Experimental Radio Service.

* * * * *

23. Section 5.151(b), is revised to read:

* * * * *

(b) If experimental stations are to be used to retransmit signals of any other station or to transmit programs intended for public reception or render any communications service, a full disclosure of this must be made in the application for license.

§ 5.154 [Removed]

24. Section 5.154 is removed.

25. Section 5.155—Operator requiremens, is revised to read:

§ 5.155 Operator requirements.

(a) The licensee shall ensure that all transmitter adjustments which affect the proper operation of a station shall be made by a person qualified to perform such adjustments.

(b) Except as specified in paragraph (c) of this section, the licensee shall be responsible for ensuring that the person

operating the transmitter is qualified to operate said station.

(c) When transmitting radiotelegraphy by any type of Morse Code, the operator shall have proved his ability to transmit by hand and receive by ear texts in Morse code signals.

(d) The provisions of this section shall not be construed to change or diminish in any respect the responsibility of station licensees to have and to maintain control over the stations licensed to them, or for proper functioning and operation of those stations in accordance with the terms of the licenses of those stations.

§ 5.156 [Removed]

26. Section 5.156 is removed.

§ 5.158 [Amended]

27. Replace the phrases "experimental services" with the phrases "Experimental Radio Service" in § 5.158.

§ 5.159 [Amended]

28. Replace the phrase "Experimental Radio Services" with the phrase "Experimental Radio Service" in § 5.159.

§ 5.160 [Amended]

29. Replace the phrase "Experimental Services" with the phrase "Experimental Radio Service" in § 5.160.

§ 5.163 [Amended]

30. Replace the phrase "experimental services" with the phrase "Experimental Radio Service" in § 5.163.

31. All of subpart E—Experimental Service (Research), is revised to read as follows:

* * * * *

Subpart E—Experimental Service (Research)

5.201 Eligibility of license.
5.202 Scope of service.
5.203 Frequencies for Experimental Radio Service.
5.204 Experimental report.
5.205 Frequencies for field strength surveys or equipment demonstrations.
5.206 Market trials.

* * * * *

Subpart E—Experimental Service (Research)

§ 5.201 Eligibility of license.

(a) Authorizations for stations in the Experimental Radio Service will be issed only to persons qualified to conduct experimentations utilizing hertzian waves for scientific or technical radio research; development of equipment or technical operation data directly related to a use of radio not provided by existing rules; for communications in connection with research projects when existing communication facilities are inadequate.

(b) Applicants eligible for authorizations in an established service, and seeking to develop operational data or techniques directed toward the improvement or extension of that service on frequencies presently allocated to that service shall conduct such projects under the developmental rules of the established service.

§ 5.202 Scope of service.

Stations operating in the Experimental Radio Service will be permitted to conduct the following types of operations:

(a) Experimentations in scientific or technical radio research.

(b) Experimentations under contractual agreement with the United States Government, or for export purposes.

(c) Communications essential to research project.

(d) Technical demonstrations of equipment or techniques.

(e) Field strength surveys by persons not eligible for authorization in any other service.

(f) Demonstration of equipment to prospective purchasers for proposed stations in existing services by persons engaged in the business of selling radio equipment.

(g) Testing of equipment in connection with production or type approval of such equipment.

(h) Development of radio technique, equipment or engineering data not relating to an existing or proposed service, including field or factory testing or calibration of equipment.

(i) Development of radio technique, equipment, operational data or engineering data related to an existing or proposed radio service.

(j) Limited market studies.

(k) Other types of experiments that are not specifically covered under (a) through (j) of this section will be considered.

§ 5.203 Frequencies for Experimental Radio Service.

Stations operating in the Experimental Radio Service may be authorized to use any government or non-government frequency designated in the Table of frequency allocations set forth in Part 2 this Chapter as available for assignment to this service: Provided, that the need for the specific frequency(ies) requested is fully justified by the applicant.

§ 5.204 Experimental report.

(a) Unless specifically stated as a condition on the authorization, licensees are not required to file a report on the results of the experimental program carried on under this subpart.

(b) The Commission may, as a condition of authorization, request the licensee to forward periodic reports in order to evaluate the progress of the experimental program.

(c) An applicant may request that the Commission withhold from the public certain reports and associated material and the Commission will withold the same unless the public interest requires otherwise.

§ 5.205 Frequencies for field strength surveys or equipment demonstrations.

(a) Authorizations issued under 5.202 (e) and (f) will normally not have specific frequencies designated in a station license. Prior to the commencement of a survey or demonstration the licensee will request a specific frequency assignment and submit the following information:

(1) Time, date and duration of survey.

(2) Frequency to be used.

(3) Location of transmitter and geographical area to be covered.

(4) Purpose of survey.

(5) Method and equipment to be used.

(6) Names and addresses of persons for whom the survey is conducted.

(b) Upon receipt of authority from the Commission to conduct a particular survey, the licensee shall furnish the Engineer-in-Charge of the radio district in which the survey is to be conducted sufficiently in advance to assure recipt before commencement thereof, the following information: Time, date, duration, frequency, location of transmitter, area to be covered, and purpose of survey.

§ 5.206 Market trials.

Authorizations granted for the purpose of market trials are subject to the following conditions:

(a) All transmitting and/or receiving equipment used in the trial shall be owned by the licensee.

(b) The licensee is responsible for informing anyone participating in the experiment that the service or device is granted under an experimental authorization and is strictly temporary.

(c) The size and scope of the trial may be subject to limitations on a case-by-case basis as the Commission shall determine.

Subpart F (§§ 5.251–5.255) [Removed]

32. All of Subpart F—Experimental Service (Developmental) is removed.

[FR Doc. 82-22304 Filed 8-13-82; 8:45 am]
BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 47, No. 158
Monday, August 16, 1982

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Crop Insurance; Interest Rate on Unpaid Premium Balance, Billing Dates

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith provides details on the interest rate to be charged when premium payments are not made within a certain time, and a list of billing dates by crop. This information is provided so that insured farmers, elements of the private insurance sector and other interested parties will be aware of this provision, and the date such interest begins if the premium is not paid.

ADDRESS: Written comments on this notice may be sent to the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447–3325.

SUPPLEMENTARY INFORMATION: On June 8, 1982, approval was given by the Board of Directors of the Federal Crop Insurance Corporation to a policy to be incorporated into all crop insurance regulations issued by FCIC, effective with the 1983 crop year, prescribing the interest rate to be charged on any unpaid premium balance owed to FCIC.

The policy is:

Interest will accrue at the rate of one and a half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

In establishing this provision, FCIC took into consideration the long standing practice of farmers to meet growing season obligations when their crops are harvested and sold. To this end, FCIC has established certain dates as first premium billing dates which are at or near the normal harvest time for the crops insured, as follows:

FIRST PREMIUM BILLING DATES

Barley, oats, and wheat:	
All counties with a final acreage reporting data after Mar. 31.	Oct. 1.
All other counties	July 1.
Forage seeding:	
New York State	July 1.
All other states	Oct. 1.
Sugar beets:	
Arizona and California	July 1.
All other states	Oct. 1.
Rye: All states	July 1.
Florida citrus: All counties	Mar. 1.
Raisins: All counties	May 1.
Sugarcane: All counties	Jan. 1.
Forage production: All counties	Sept. 1.
Cotton: All counties	Nov. 1.
Tobacco:	
Counties with flue-cured Types 11, 12, 13, and 14.	Oct. 1.
All other counties	Jan. 1.
Texas citrus trees	Mar. 1.
All other crops: All counties	Oct. 1.

As indicated in the language of the interest rate provision, interest will begin to accrue on the first day of the month following the first premium billing date, resulting in the insured having approximately 30 days in which to pay the premium without interest.

Under the provisions of the FCIC crop insurance regulations, the premium is due and payable when insurance attaches. This is about the time of seeding or planting. However, FCIC's practice has been to delay terming the payment as delinquent until the end of the growing season. The interest rate provision does not deviate from this practice.

The interest rate provision will be applicable to 1983 crops which include thse 1982 fall-planted crops harvested in the 1983 crop year.

Done in Washington, D.C., on August 5, 1982.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

Dated: August 9, 1982.

Approved by:

Robert H. Sindt,

Deputy Manager.

[FR Doc. 82-22251 Filed 8-13-82; 8:45 am]

BILLING CODE 3410-08-M

Statistical Reporting Service

Procedure for Determining National Average Prices Received by Farmers for Rice

Notice appearing in the **Federal Register**, Volume 44, No. 56 (March 21, 1979) established the procedure for determination of the national average market price received by rice farmers for the 1978 through 1981 crops. The national average price thus determined is used to compute rice deficiency payments. Notice is hereby given that no change in the previously adopted procedure given below will be made for computation of the 1982 and subsequent crop year prices.

FORMULA

National average market price received by farmers during first 5 months of marketing year.

$$= \frac{Q_1P_1+Q_2P_2+Q_3P_3+Q_4P_4}{Q_1+Q_2+Q_3+Q_4}$$

Where:

Q_1 = Quantity of all rough rice purchased from farmers during first 5 months of marketing year as reported by firms reporting both quantity purchased from and dollars received by farmers.

P_1 = Average price received by farmers for all rough rice purchased from farmers during the first 5 months of marketing year as reported by firms reporting both quantity purchased from and dollars received by farmers.

Q_2 = Quantity of rough short grain rice purchased from farmers during first 5 months of marketing year as reported by firms reporting only quantity purchased from farmers.

P_2 = Average price received by farmers for rough short grain rice purchased from farmers during the first 5 months of marketing year as reported by firms reporting quantity purchased from and dollars received by farmers.

Q_3 = Quantity of rough medium grain rice purchased from farmers during first 5 months of marketing year as reported by firms reporting only quantity purchased from farmers.

P_3 = Average price received by farmers for rough medium grain rice purchased from farmers during the first 5 months of marketing year as reported by firms reporting both quantity purchased from and dollars received by farmers.

Q_4 = Quantity of rough long grain rice purchased from farmers during first 5 months of marketing year as reported by

firms reporting only quantity purchased from farmers.

P_4 = Average price received by farmers for rough long grain rice purchased from farmers during the first 5 months of marketing year as reported by firms reporting both quantity purchased from and dollars received by farmers.

Members of the public wishing to comment on this action may submit their views in writing to the Director, Estimates Division, Statistical Reporting Service, USDA, Room 5847–S, Washington, D.C. 20250. The comment period will close September 24, 1982.

Done at Washington, D.C. this 9th day of August 1982.

W. E. Kibler,

Administrator.

[FR Doc. 82–22206 Filed 8–13–82; 8:45 am]

BILLING CODE 3410–20–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 16–82]

Foreign-Trade Zone 31, Granite City, Illinois; Application for Special-Purpose Subzone

Notice is hereby given that an application has been submitted to the Foreign-Trade Zones Board (the Board) by the Tri-City Regional Port District, grantee of Foreign-Trade Zone 31, requesting a special-purpose subzone for Chrysler Corporation's St. Louis auto assembly plant located in Fenton, Missouri, within the St. Louis Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 30, 1982. The Port District was created to promote commerce in the St. Louis metropolitan area and is authorized to make this proposal under Illinois P.A. 79–613, Sec. 1.

Foreign-Trade Zone 31 was authorized by the Board on September 6, 1977 (Board Order 122, 42 FR 46568, 9/16/77). The zone consists of a 47-acre site within the 127-acre Tri-City Industrial Center, adjacent to the Chain of Rocks Canal and within the St. Louis Customs port of entry. Zone operations began in April 1981, at a nearby warehouse which has been given temporary zone status while construction is completed at the permanent site.

The applicant requests subzone status for Chrysler's St. Louis Assembly Plant located at 1001 North Highway Drive, Fenton, Missouri. The subzone would cover 107 acres of the main manufacturing area within the 341-acre complex. Plant operations include machining, welding, finishing and final assembly of passenger cars. Parts and components are received frrom other Chrysler plants and from domestic and foreign suppliers. Imported components, primarily engines, account for roughly 30 percent of total material value.

Zone procedures will allow Chrysler to export finished autos without paying duties on foreign parts and material. On its domestic sales the company will be able to take advantage of the duty rate applicable to finished autos, which is 2.8 percent compared to 3.7 percent for engines. This will assist Chrysler in competing with offshore plants, helping to maintain operations at the 3000-worker St. Louis plant.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report thereon to the Board. The committee consists of Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; William L. Duncan, District Director, U.S. Customs Service, Region IX, 120 South Central Avenue, St. Louis, Missouri 63105; and Colonel Robert J. Dacey, District Engineer, U.S. Army Engineer District St. Louis, 210 Tucker Blvd. North, St. Louis, Missouri 63101.

Comments concerning the propsoed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 8, 1982.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, 120 South Central Avenue, St. Louis, Missouri 63105

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania NW., Room 3721, Washington, D.C. 20230.

Date: August 10, 1982.

John J. Da Ponte, Jr.,

Executive Secretary, Foreign-Trade Zones Board.

[FR Doc. 82–22238 Filed 9–13–82; 8:45 am]

BILLING CODE 3510–25–M

[Docket No. 17–82]

Foreign-Trade Zone 46, Cincinnati, Ohio; Application for Subzone in Celina, Ohio

Notice is hereby given that an application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Cincinnati Foreign-Trade Zone, Inc. (GCFTZ), a non-profit Ohio corporation affiliated with the Greater Cincinnati Chamber of Commerce and grantee of Foreign-Trade Zone 46 in Cincinnati, Ohio, requesting authority to establish a special-purpose subzone for the Huffy Corporation's bicycle manufacturing plant in Celina, Ohio. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on July 30, 1982. The applicant is authorized to make this proposal under House Bill 200, 1977 Laws of Ohio.

On January 12, 1979, the GCFTZ received authority to establish a foreign-trade zone project in the Cincinnati port of entry area (Borad Order 141, 44 FR 4003, 1/19/79). The public facilities involve a 100-acre industrial park site in Butler County, Ohio (FTZ 46), where construction is underway. GCFTZ is presently the sponsor of subzones at the General Electric aircraft engine assembly plant in Evendale and the Honda motorcycle and automobile assembly facilities in Union County.

GCFTZ now requests subzone status for the 39-acre bicycle manufacturing plant of Huffy Corporation, located at Lake and Haverman Roads, Celina, Ohio. The facility produces some 2.5 million childrens and lightweight bicycles and a number of bicycle parts, employing 1900 persons. Plant operations include manufacturing and finishing of parts, and final assembly. Over 40 percent of the parts for the lightweight bicycles and about 20 percent of the parts for the childrens bicycles are purchased from foreign sources, including brakes, chains, wheel hubs, derailleurs, control levers, tires, rims, seats and pedals.

Zone procedures will exempt Huffy from Customs duties on parts and components used for exports. On its domestic sales, the company will be able to take advantage of the duty rates that apply to finished imported bicycles which accounted for over 20 percent of the U.S. market in 1980. The duty rates on commonly imported parts range from 12.8 to 15.0 percent, whereas the duty rate on childrens bicycles is 11.0 percent and on lightweight bicycles, 5.5 percent. The company estimates that duty savings from zone procedures could equal up to 2 percent of the retail price of a bicycle, which, in the current internationally competitive environment, would be helpful in maintaining operations and employment at the plant.

The proposed site is about 60 miles from the closest Customs port of entry, and as part of the review of the proposal the question of whether this meets the "adjacency" requirement of the FTZ Act will be considered.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report thereon to the Board. The committee consists of John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Harvey L. Perry, Acting District Director, U.S. Customs Service, Region IX, 6th Floor, Plaza Nine Bldg., 55 Erieview Plaza, Cleveland, Ohio 44114; and Colonel Charles E. Eastburn, District Engineer, U.S. Army Engineer District Louisville, P.O. Box 59, Louisville, Kentucky 40201.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 10, 1982.

A copy of the application is available for public inspection at each of the following locations:

U.S. Dept. of Commerce District Office, 10504 Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th and Pennsylvania NW., Room 3721, Washington, D.C. 20230.

Dated: August 10, 1982.

John J. Da Ponte, Jr.,

Executive Secretary, Foreign-Trade Zones Board.

[FR Doc. 82-22239 Filed 8-13-82; 8:45 am]

BILLING CODE 3510-25-M

[Docket No. 18-82]

Proposed Foreign-Trade Zone, Huntsville, Alabama; Application and Public Hearing

Notice is hereby given that an application has been submitted to the Foreign-Trade Zones Board (the Board) by the Huntsville-Madison County Airport Authority (the Airport Authority), an Alabama public corporation, requesting authority to establish a general-purpose foreign-trade zone in Huntsville, within the Huntsville Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 C.F.R. Part 400). It was formally filed on July 30, 1982. The applicant is authorized to make this proposal under Act No. 498, House Bill 1158, Bound Acts of Alabama, 1977.

The proposed foreign-trade zone will cover 4 sites totaling 1300 acres within the 3,000-acre Huntsville-Madison County Airport and industrial complex. The facility is owned and will be operated by the Airport Authority. An existing 50,000 square foot warehouse is available for initial zone operations. Space is also available for firms requiring separate facilities.

The application contains evidence of the need for zone services in the Huntsville area. A number of prospective tenants have indicated an interest in using the zone for warehousing, distribution, processing, and manufacturing of products such as bauxite, machinery and parts, foundry components, valve parts, gear boxes, bearings, electronic components and products, and components for televisions, telephones, and computers. At the outset, only non-manufacturing operations are involved. Specific manufacturing approvals are not being sought at this time, with requests to be made in the future on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Harvey L. Perry, District Director, U.S. Customs Service, Region V, 250 N. Water Street, Mobile, Alabama 36601; and Colonel Patrick J. Kelly, District Engineer, U.S. Army Engineer District Mobile, P.O. Box 2288, Mobile, Alabama 36628.

As part of its investigation, the examiners committee will hold a public hearing on September 8, 1982, beginning at 10:00 a.m., in the Madision Room of the Sky Center Hotel, Huntsville-Madison County Airport, Huntsville. The purpose of the hearing is to help inform interested persons about the proposal, to provide an opportunity for their expression of views, and to obtain information useful to the examiners.

Interested parties are invited to present their views at the hearing. They should notify the Board's Executive Secretary of their desire to be heard in writing at the address below or by phone (202/377–2362) by September 1, 1982. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through October 8, 1982. Evidence submitted during the post-hearing period is not desired unless it is clearly shown that the matter is new and material and that there are good reasons why it could not be presented at the hearing. A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

Office of the Executive Director, Huntsville-Madison County Airport Authority, Terminal Building, Huntsville-Madison County Airport, Huntsville, Alabama 35806

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3721, 14th and Pennsylvania NW., Washington, D.C. 20230.

Dated: August 10, 1982.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 82-22240 Filed 8-13-82; 8:45 am]

BILLING CODE 3510-25-M

[Docket No. 19-82]

Proposed Foreign-Trade Zone, Great Falls, Montana; Application and Public Hearing

Notice is hereby given that an application has been submitted to the Foreign-Trade Zones Board (the Board) by the Economic Growth Council of Great Falls (the Council), a quasi-public Montana Corporation, requesting authority to establish a general-purpose foreign-trade zone in Great Falls, Montana, within the Great Falls Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 2, 1982. The applicant is authorized to make this proposal under Section 30–15–101 of the Montana Code Annotated.

The zone is to cover 35,000 square feet within the 2000-acre Great Falls International Airport complex. An existing 7500 square foot building will be made available for initial zone operations. The facility is owned by the applicant and will be operated by Ralph V. Sluys, a Customshouse Broker.

The application contains evidence of the need for zone services in the Great Falls area. Prospective tenants have indicated an interest in using the zone for products such as warehousing, inspection, exhibition, export staging, and processing of chemical products,

building materials, pressure gauges, electronic devices, and honey.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff; U.S. Department of Commerce, Washington, D.C. 20230; Donald W. Myhra, District Director, U.S. Customs Service, Region VIII, 600 Central Avenue, P.O. Box 791, Great Falls, Montana 59403; and Colonel William R. Andrews, Jr., District Engineer, U.S. Army Engineer District Omaha, 6014 U.S.P.O. and Courthouse, Omaha, Nebraska 68102.

As part of its investigation, the examiners committee will hold a public hearing on September 16, 1982, beginning at 9:00 a.m., in the City Commission Chambers, Civic Center Building, Central Avenue and Park Drive, Great Falls, Montana. The purpose of the hearing is to inform interested persons about the proposal, to provide an opportunity for their expression of views, and to obtain information useful to the examiners.

Interested parties are invited to present their views at the hearing. They should notify the Board's Executive Secretary of their desire to be heard in writing at the address below or by phone (202/377–2862) by September 6, 1982. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through October 16, 1982. Evidence submitted during the post-hearing period is not desired unless it is clearly shown that the matter is new and material and that there are good reasons why it could not be presented at the hearing. A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

US. Customs Service District Office, 600 Central Avenue, P.O. Box 791, Great Falls, Montana 59403

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3721, 14th and Pennsylvania, N.W., Washington, D.C. 20230.

Dated: August 10, 1982.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 82-22241 Filed 8-13-82; 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 Efratom Systems Corporation a limited exclusive right in the United States for the manufacture, use and sale of the products embodied in U.S. Patent No. 4,122,408 (dated October 24, 1978) "Frequency Stabilization Utilizing Multiple Modulation."

The limited exclusive license granted by NTIS is a royalty-bearing license for a term of five years from the date of the first commerical sale. The license may be revoked in accordance with 41 CFR 101–4.104.5.

Dated: August 5, 1982.

Douglas J. Campion,
Program Coordinator, Office of Government Inventions and Patents, National Technical Information Service.

[FR Doc. 82-22300 Filed 8-13-82; 8:45 am]
BILLING CODE 3510-04-M

National Telecommunications and Information Administration

Grants for Planning and Construction of Public Telecommunications Facilities; Acceptance of Applications for Filing; Correction

Notice is hereby given of the following corrections to the listing of applications accepted for filing under the provisions of Title III, Part IV of the Communications Act of 1934, as amended (47 U.S.C. 390–394), and in accordance with 15 CFR Part 2301; which was announced on July 9, 1982 (46 FR 39082–39105).

I. The following are new applications, which were inadvertently omitted, and are inserted in Part I, *New Applications and Major Amendments to Deferred Applications*, under the appropriate State abbrevation heading as follows:

CA (California)

File No. 2207CRB, Humboldt State University, Arcata, CA 95521. Signed by: Dr. Donald F. Strahan, Vice President, Academic Affairs. Funds Requested: $25,099.00. Total Project Cost: $34,465.00. To upgrade public radio station KHSU–FM operating on 90.5 MHz in Arcata, California, by installing a receive-only satellite dish.

ID (Idaho)

File No. 2361PRTB, Nez Perce Tribe of Idaho, P.O. Box 365, Lapwai, ID 83540. Signed by: Wilfred A. Scott, Tribal Executive. Funds Requested: $25,000.00. Total Project Cost: $25,000.00. To plan for needed public telecommunications facilities and services to reach unserved members of the Nez Perce Tribe of Idaho.

NC (North Carolina)

File No. 2254CON, Collegiate T/C System, Inc., Box 22001, Greensboro, NC 27420. Signed by: Gary F. Flanigan, President. Funds Requested: $145,000.00. Total Project Cost: $210,000.00. To establish a production center to produce programming for radio and TV stations operated by black colleges and minorities.

II. The following deferred application ws submitted and accepted for filing by PTFP in a prior fiscal year, and the applicant requested re-activation of the proposal. On page 30039, column 1, insert:

AZ (Arizona)

New File No. 2362CTB, Arizona Board of Regents, University of Arizona; Tucson, AZ, old file No. 1699CTB.

Pursuant to 15 CFR 2301.9 applicants were required to publish in a newspaper of general circulation in the community to be served by the applicant, a notice that such application has been tendered to the PTFP of the National Telecommunications and Information Administration. The notice shall have been published once a week for two consecutive weeks on or before May 7, 1982. The Notice included (1) information as to where within the community to be served a copy of the application and any amendments thereto, may be inspected by the public during normal business hours, and (2) an initation for parties supporting or opposing the application to file comments with the Administrator, National Telecommunications and Information Administration, Public Telecommunications Facilities Program, Washington, D.C. 20230. All filings must be made within 15 calendar days from the date of this public notice of acceptance of the application and must be accompanied by a certificate that the copy of the comments has been mailed to the applicant.

(It is not necessary that the reactivated applicant republish notice in a local newspaper in the community to be served under 15 CFR 2301.9.)

FOR FURTHER INFORMATION CONTACT:
John J. O'Neill, (202) 377–5802.

(47 U.S.C. 390–394; 397)

(Catalog of Federal Domestic Assistance Program No. 11.550, Public Telecommunications Facilities Program)

Bernard J. Wunder, Jr.,

Administrator, National Telecommunications and Information Administration.

[FR Doc. 82-22200 Filed 8-13-82; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increasing Import Restraint Levels for Certain Cotton Textile Products From the Republic of Singapore

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Increasing the consultation level for duck in Category 319, produced or manufactured in the Republic of Singapore and exported during the agreement year which began on January 1, 1982, to 3,900,000 square yards from 3,000,000 square yards.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506), December 24, 1980 (45 FR 85142), May 5, 1981 (46 FR 25121), October 5, 1981 (46 FR 48962), October 27, 1981 (46 FR 52409), February 9, 1982 (47 FR 5926), and May 13, 1982 (47 FR 20654).)

SUMMARY: Pursuant to the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of August 21, 1981, as amended, between the Governments of the United States and the Republic of Singapore, the consultation level established for cotton textile products in Category 319 is being increased for the agreement year which began on January 1, 1982 and extends through December 31, 1982.

EFFECTIVE DATE: August 17, 1982.

FOR FURTHER INFORMATION CONTACT: Ronald J. Sorini, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

SUPPLEMENTARY INFORMATION: On December 18, 1981, there was published in the **Federal Register** (46 FR 61687) a letter dated December 15, 1981 from the Chairman, Committee for the Implementation of Textile Agreements, to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton, wool, and man-made fiber textile products, produced or manufactured in the Republic of Singapore, which may be entered into the United States for consumption, or withdraw from warehouse for consumption, during the twelve-month period which began on January 1, 1982 and extends through December 31, 1982. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the twelve-month level previously established for Category 319 to the designated amount.

Walter C. Lenahan,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 11, 1982

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D. C. 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 15, 1981 for the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, during the twelve-month period which began on January 1, 1982 and extends through December 31, 1982, of cotton, wool, and man-made fiber textile products in certain specific categories, produced or manufactured in Singapore, in excess of designated levels of restraint.

Effective on August 17, 1982 you are directed to increase the level previously established for cotton textile products in Category 319 to the following amount:

Category	Amended 12-month level of restraint [1]
319	[2]3,900,000

[1] The level of restraint has not been adjusted to reflect any imports after December 31, 1981.
[2] Square yards.

The actions taken with respect to the Government of the Republic of Singapore and with respect to imports of cotton fiber textile products from the Republic of Singapore have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necesssry for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Walter C. Lenahan,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 82-22244 Filed 8-13-82; 8:45 am]

BILLING CODE 3510-25-M

Amending the Visa Requirement for Certain Cotton, Wool, and Man-Made Fiber Apparel Exported From Sri Lanka

August 11, 1982.

AGENCY: Committee for the Implemetation of Textile Agreements.

ACTION: Recognizing the Greater Colombo Economic Commission (G.C.E.C.) as a valid authority of the Government of Sri Lanka to issue export visas for certain cotton, wool, and man-made fiber apparel products, produced or manufactured in Sri Lanka, in addition to the Ministry of Textile Industries, which is currently so authorized.

SUMMARY: The Governments of the United States and Sri Lanka have exchanged letters amending the visa mechanism established pursuant to the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of July 7, 1980, as amended, to provide for recognition of the Greater Colombo Economic Commission (G.C.E.C.) as a valid issuing authority, in addition to the Ministry of Textile Industries, for export visas for cotton, wool, and man-made fiber apparel products subject to the agreement.

EFFECTIVE DATE: On May 1, 1982 the Greater Colombo Economic Commission (G.C.E.C.) began issuing export visas for cotton, wool, and man-made fiber apparel products, produced or manufactured in Sri Landa, in addition to the Ministry of Textile Industries. On and after May 1, 1982, visas issued by either authority will be recognized as valid for entry into the United States for consumption, or withdrawal from warehouse for consumption.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

SUPPLEMENTARY INFORMATION: On June 21, 1979, there was published in the **Federal Register** (44 FR 36221) a letter dated June 15 1979 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established an export visa requirement for cotton, wool, and man-made fiber apparel products, produced or manufactured in Sri Landa. The letter published below further amends the letter of June 15, 1979 to include recognition of the Greater Colombo Economic Commission (G.C.E.C.) as a valid issuing authority for export visas for apparel products, produced or manufactured in Sri Lanka,

in addition to the Ministry of Textile Industries, with effect from May 1, 1982.

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

August 11, 1982.

Committee for the Implementation of Textile Agreements,

Commission of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of June 15, 1979 from the Chairman of the Committee for the Implementation of Textile Agreements, which directed you to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, and man-made fiber apparel products, produced or manufactured in Sri Lanka, for which the Government of Sri Lanka had not issued an appropriate export visa.

Effective on May 1, 1982, the directive of June 15, 1979 is further amended to provide for the recognition of the Greater Colombo Economic Commission (G.C.E.C.) as a valid authority of the Government of Sri Lanka to issue export visas for cotton, wool, and man-made fiber textile products in Categories 330–359, 431–459, and 630–659, produced or manufactured in Sri Lanka and exported on and after May 1, 1982, in addition to the Ministry of Textile Industries. On and after May 1, 1982, visas issued by either authority shall be recognized as valid for entry for consumption, or withdrawal from warehouse for consumption, in the United States until further notice.

The action taken with respect to the Government of Sri Lanka and with respect to imports of cotton, wool, and man-made fiber apparel products from Sri Lanka has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Paul T. O'Day,

Chairman, Committee for the Implementation of Textile Agreements.

FR Doc. 82-22320 Filed 8-13-82; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

List of Accrediting and State Approval Agencies To Be Reviewed Under a Special Procedure

AGENCY: Education Department.

ACTION: Notice—List of accrediting and State approval agencies to be reviewed under a special procedure.

SUMMARY: The Secretary lists nationaly recognized accrediting agencies and State approval agencies that the National Advisory Committee on Accreditation and Institutional Eligibility recommends to the Secretary under a special review procedure. The list of agencies to which the Advisory Committee has applied this special procedure is composed of (1) agencies that were awarded the full four-year recognition in their last review and (2) agencies that have submitted interim reports.

DATE: Comments on these analyses must be received no later than August 17, 1982.

ADDRESSES: Comments may be submitted to Dr. L. W. Friedrich, Acting Chief, Agency Evaluation Section, Eligibility and Agency Evaluation Staff, Office of Postsecondary Education, 400 Maryland Avenue, SW., (Room 3030, ROB-3), U.S. Department of Education,Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. L. W. Friedrich, Telephone (202) 245-9873.

SUPPLEMENTARY INFORMATION: This document advises the public that the National Advisory Committee on Accrediation and Institutional Eligibility, in making recommendations to the Secretary regarding his responsibility for listing accrediting agencies and State approval agencies, as required by 20 U.S.C. 1094(b)(3), 20 U.S.C. 1141(a) and other statutes, is following a special review procedure regarding some agencies.

Previously the Advisory Committee reviewed in detail each report and petition, each staff analysis, and heard oral presentations from the petitioning agencies and interested third parties before formulating its recommendations to the Secretary regarding the accrediting, or State approval, agencies.

The special procedure for reviewing agency petitions and interim reports will reduce the depth of review by the Advisory Committee of agencies that were awarded the full four year recognition period in their last review, and of agencies which have submitted interim reports. The Advisory Committee will use both staff analyses and public comment before submitting final recommendations to the Secretary regarding the listing of these agencies under 34 CFR Part 603.

This notice provides the names of the agencies being reviewed under this special procedure. The Department's Eligibility and Agency Evaluation Staff has prepared analyses of the petitions and reports of these agencies according to the criteria in 34 CFR 603.6 and 34 CFR 603.24, and has prepared proposed recommended actions on them.

The public is offered an opportunity to comment on these analyses before the Advisory Committee makes final recommendations to the Secretary.

The reports and petitions of the following agencies are being reviewed:

Interim Reports

American Association for Marriage and Family Therapy, Commission on Accreditation for Marriage and Family Therapy Education
Proposed Recommendation: Accept the report as satisfactory.

New York State Board of Regents
Proposed Recommendation: Accept the report as satisfactory.

Petitions for Continuation of Recognition

Accreditation Board for Engineering and Technology, Inc.
Proposed Recommendation: Continue recognition for four years. Request an interim report in two years regarding improvement in compliance with criteria (a)(3)(iii)(A) (self-analysis) and (b)(5) (assessment of validity and reliability of standards).

American Board of Funeral Service Education, Committee of Accreditation
Proposed Recommendation: Continue recognition for a period of four years. Request an interim report in two years concerning full compliance with criteria (a)(2)(ii) (fiscal management), (b)(2)(ii)(D) (publication of affiliations of members of policy and decision-making bodies), (b)(2)(iii) (notice of standards revision—providing opportunity for comment), (b)(2)(iv) (complaint review procedure), (b)(3)(vii) (providing notice of right to appeal), (b)(4) (fostering nondiscrimination), and (b)(5) (assessment of validity and reliability of standards).

Association of Advanced Rabinical and Talmudic Schools, Accreditation Commission
Proposed Recommendation: Continue recognition for four years. Request an interim report in one year regarding improvement in compliance with (a)(3)(iii) (A) and (B) (self-analysis and guidance to institutions), and (b)(5) (assessment of validity and reliability of standards).

National Association of Schools of Art and Design, Commission on Accreditation and Membership
Proposed Recommendation: Continue recognition for four years. Request

an interim report in two years concerning compliance with criteria (b)(3)(viii)(C) (provides chief executive officer with a written decision of appeal body), and (b)(5) (assessment of validity and reliability of accreditation standards).

National Association of Schools of Music

Proposed Recommendation: Continue recognition for four years. Request an interim report in two years on improved compliance with criteria (b)(3)(viii)(C) (suppling institution with written decision of appeal body, including specifics), and (b)(5) (assessment of validity and reliability of standards).

Iowa State Board of Public Instruction

Proposed Recommendation: Continue recognition for four years.

Invitation to Comment

A copy of the analysis of any of the reports and petitions submitted by the agencies listed in this notice may be obtained from Dr. L. W. Friedrich.

Dated: July 12, 1982.

T. H. Bell,

Secretary of Education.

[FR Doc. 82-22259 Filed 8-13-82; 8:45 am]

BILLING CODE 4000-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59094B; TSH-FRL No. 2189-2]

Alkylphenol, Formaldehyde, Alkanolamine, Alkylene Oxides Reaction Product; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA received an application for a test marketing exemption (TM-82-31) under section 5 of the Toxic Substances Control Act (TSCA) on June 29, 1982. Notice of receipt of the application was published in the Federal Register of July 12, 1982 (47 FR 30104). EPA has granted the exemption.

EFFECTIVE DATE: This exemption is effective on August 6, 1982.

FOR FURTHER INFORMATION CONTACT: June Thompson, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. M-2610, 401 M St., SW., Washington, D.C. 20460, (202-755-9190).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(d) and any applicable requirements of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements for certain new chemical substances.

Section 5(h), "Exemptions", contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirements of section 5(a) or section 5(b), and to permit them to manufacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and under section 5(h)(6) the Agency must publish a notice of this disposition in the Federal Register. If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

On June 29, 1982, EPA received an application for an exemption from the requirements of sections 5(a) and 5(b) of TSCA to manufacture a new chemical substance for test marketing purposes. The application was assigned test marketing exemption number TM-82-31. The submission is for alkylphenol, formaldehyde, alkanolamine, alkylene oxides reaction product. The submitter, U.T.C., Inc., claimed the specific chemical identity as confidential business information. A maximum of 441 kilograms (kg) of the new chemical substance will be produced and will be test marketed for use in the manufacture of rigid urethane foam for a period not to exceed 45 days. During manufacture, processing, and disposal approximately two workers per each operation will be intermittently exposed up to 8 hours/day. Workers will be required to wear protective clothing, including goggles and gloves. Therefore, exposure during manufacture and processing should be minimal.

A notice published in the Federal Register of July 12, 1982 (47 FR 30104) announced receipt of this application and requested comment on the appropriateness of granting the exemption. The Agency did not receive any comments concerning the application.

EPA has established that the test marketing of the new chemical substance submitted under TM-82-31 will not present an unreasonable risk of injury to health or the environment under the specific conditions set out in the application. Due to the small production volume and low potential for exposure to, and release of, the test market chemical, concerns for health and environmental effects are low. No significant health effects were identified and less than 40 kg of the test market chemical is expected to be released to air, water, and land.

This test marketing exemption, for the use as specified, is granted based on the facts and information obtained and reviewed.

1. This exemption is granted solely to this manufacturer.

2. The application must maintain records of the date(s) of shipment(s) to the customers specified in the application, and the quantities shipped in each shipment, and must make these records available to EPA upon request.

3. Each bill of lading that accompanies a shipment of the substance during the test marketing period must state that the use of the substance is restricted to that described to EPA in the test marketing exemption application.

4. The production volume of the new substance may not exceed the quantity described in the test marketing exemption application.

5. The test marketing activity approved in this notice is limited to a 45-day period commencing on the date of signature of this notice by the Director of the Office of Toxic Substances.

6. The number of workers exposed to the new chemical should not exceed that specified in the application, and the exposure levels and duration of exposure should not exceed those specified in the application.

The Agency reserves the right to rescind its decision to grant this exemption should any new information come to its attention which casts significant doubt on the Agency's conclusion that the test marketing of this substance under the conditions specified in the application will not present an unreasonable risk of injury to human health or the environment.

Dated: August 6, 1982.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 22226 Filed 8-13-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59094C; TSH-FRL 2189-3]

Calcium Salt of a Substituted Amino Acid; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA received an application for a test marketing exemption (TM-82-32) under section 5 of the Toxic Substances Control Act (TSCA) on June 30, 1982. Notice of receipt of the application was published in the **Federal Register** of July 12, 1982 (47 FR 30104). EPA has granted the exemption.

EFFECTIVE DATE: This exemption is effective on August 6, 1982.

FOR FURTHER INFORMATION CONTACT: Rose Allison, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. M-2610, 401 M St., SW., Washington, D.C. 20460, (202-755-9190).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(d) and any applicable requirements of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements for certain new chemical substances.

Section 5(h), "Exemptions", contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirements of section 5(a) or section 5(b), and to permit them to manufacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and under section 5(h)(6) the Agency must publish a notice of this disposition in the **Federal Register.** If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

On June 30, 1982, EPA received an application for an exemption from the requirements of section 5(a) and 5(b) of TSCA to manufacture a new chemical substance for test marketing purposes. The application was assigned test marketing exemption number TM-82-32. The submission is for a calcium salt of a substituted amino acid. The substance will be used in an open use. The submitter, Shinko American, claimed the specific identity, specific use, process description, and disposal material as confidential business information. A maximum of 750 kilograms (kg) will be imported and will be test marketed for a period not to exceed 3 months. The importer states that the use will involve more than once per week exposure will potential for skin contact. The use may involve a restricted consumer exposure to the substance as part of an article.

A notice published in the **Federal Register** of July 12, 1982 (47 FR 30104) announced receipt of this application and requested comment on the appropriateness of granting the exemption. The Agency did not receive any comments concerning the application.

EPA has established that the test marketing of the new substance submitted in TM-82-32 under the conditions set out in the application will not present any unreasonable risk of injury to health or the environment. The Agency identified no significant health or ecological concerns and exposure during processing is not expected to be high. Environmental release and consumer exposure is expected to be low.

This test marketing exemption is granted based on the facts and information obtained and reviewed, but is subject to all conditions set out in the exemption application and, in particular, those enumerated below.

1. This exemption is granted solely to this importer.

2. The applicant must maintain records of the date(s) of shipment(s) to the customers, and the quantities shipped in each shipment, and must make these records available to EPA upon request.

3. Each bill of lading that accompanies a shipment of the substance during the test marketing period must state that the use of the substance is restricted to that described to EPA in the test marketing exemption application.

4. The production volume of the new substance may not exceed the quantity of 750 kg described in the test marketing exemption application.

5. The test marketing activity approved in this notice is limited to a 3-month period commencing on the date of signature of this notice by the Director of the Office of Toxic Substances.

6. The number of workers exposed to the new chemical should not exceed that specified in the application, and the exposure levels and duration of exposure should not exceed those specified in the application.

The Agency reserves the right to rescind its decision to grant this exemption should any new information come to its attention which casts significant doubt on the Agency's conclusion that the test marketing of this substance under the conditions specified in the application will not present an unreasonable risk of injury to human health or the environment.

Dated: August 6, 1982.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 82-22227 Filed 8-13-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59094D; TSH-FRL 2189-1]

Polymer of Hexane, 1,6-Diisocyanato-Homopolymer With 2-Butane, Oxime; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA received an application for a test marketing exemption (TM-82-33) under section 5 of the Toxic Substances Control Act (TSCA) on July 1, 1982. Notice of receipt of the application was published in the **Federal Register** of July 12, 1982 (47 FR 30104). EPA has granted the exemption.

EFFECTIVE DATE: This exemption is effective on August 8, 1982.

FOR FURTHER INFORMATION CONTACT: E. June Thompson, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. M-2610, 401 M St. SW., Washington, D.C. 20460, (202-755-9190).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(d) and any applicable requirements of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements for certain new chemical substances.

Section 5(h), "Exemptions", contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirements of section 5(a) or section 5(b), and to permit them to manufacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and under section 5(h)(6) the Agency must publish a notice of this disposition in the **Federal Register.** If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

On July 1, 1982, EPA received an application for an exemption from the requirements of sections 5(a) and 5(b) of TSCA to manufacture a new chemical substance for test marketing purposes. The application was assigned test marketing exemption number TM-82-33. The submission is for a polymer of hexane, 1,6-diisocyanato-homopolymer with 2-butane, oxime. The submitter claimed the company identity as confidential business information. A maximum of 2,273 kilograms (kg) of the new chemical substance will be imported and test marketed for use as a crosslinker for industrial coatings for a period not to exceed 6 months. At 10 test marketing sites, a maximum of 50 workers would have potential exposure through possible eye and skin contact and by possible inhalation of the new chemical substance. However, workers are advised that during handling of the test market material, safety goggles, and protective clothing should be worn to protect against eye and skin contact. To protect against inhalation exposure, use of an organic vapor/particulate air purifying respirator is recommended. With use of protective clothing and equipment, exposure during processing should be minimal. A notice published in the **Federal Register** of July 12, 1982 (47 FR 30104) announced receipt of this application and requested comment on the appropriateness of granting the exemption. The Agency did not receive any comments concerning the application.

EPA has established that the test marketing of the new chemical substance submitted under TM-82-33 will not present an unreasonable risk of injury to health or to the environment under the specific conditions set out in the application.

No significant health or environmental effect concerns were identified. The test market chemical is insoluble in water and is not expected to be absorbed. If ingested, the test market substance could hydrolyze in the gastrointestinal tract, but expected hydrolysis by-products would be of low concern.

This test marketing exemption is granted based on the facts and information obtained and reviewed, but is subject to all conditions set out in the exemption application and, in particular, those enumerated below.

1. This exemption is granted solely to this importer.

2. The applicant must maintain records of the date(s) of shipment(s) to the customers, and the quantities shipped in each shipment, and must make these records available to EPA upon request.

3. Each bill of lading that accompanies a shipment of the substance during the test marketing period must state that the use of the substance is restricted to that described to EPA in the test marketing exemption application.

4. The import volume of the new substance may not exceed the quantity of 750 kg described in the test marketing exemption application.

5. The test marketing activity approved in this notice is limited to a 6-month period commencing on the date of signature of this notice by the Director of the Office of Toxic Substances.

6. The number of workers exposed to the new chemical should not exceed that specified in the application and the exposure levels and duration of exposure should not exceed those specified in the application.

The Agency reserves the right to rescind its decision to grant this exemption should any new information come to its attention which casts significant doubt on the Agency's conclusion that the test marketing of this substance under the conditions specified in the application will not present an unreasonable risk of injury to human health or the environment.

Dated: August 9, 1982.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 82-22225 Filed 8-13-82; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59094A; TSH-FRL 2188-8]

Substituted Diyne Urethane; Approval of Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA received an application for a test marketing exemption (TM-82-30) under section 5 of the Toxic Substances Control Act (TSCA) on June 29, 1982. Notice of receipt of the application was published in the **Federal Register** of July 12, 1982 (47 FR 30104). EPA has granted the exemption.

EFFECTIVE DATE: This exemption is effective on August 6, 1982.

FOR FURTHER INFORMATION CONTACT: Rose Allisons, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. M-2610, 4 01 M St., SW., Washington, D.C. 20460, (202-755-9190).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture in, or import into, the United States a new chemical substance for commercial purposes must submit a notice to EPA before manufacture or import begins. A "new" chemical substance is any chemical substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(1) requires each premanufacture notice (PMN) to be submitted in accordance with section 5(d) and any applicable requirements of section 5(b). Section 5(d)(1) defines the contents of a PMN and section 5(b) contains additional reporting requirements for certain new chemical substances

Section 5(h), "Exemptions", contains several provisions for exemptions from some or all of the requirements of section 5. In particular, section 5(h)(1) authorizes EPA, upon application, to exempt persons from any requirements of section 5(a) or section 5(b), and to permit them to manufacture or process chemical substances for test marketing purposes. To grant an exemption, the Agency must find that the test marketing activities will not present any unreasonable risk of injury to health or the environment. EPA must either approve or deny the application within 45 days of its receipt, and under section 5(h)(6) the Agency must publish a notice of this disposition in the **Federal Register.** If EPA grants a test marketing exemption, it may impose restrictions on the test marketing activities.

On June 29, 1982, EPA received an application for an exemption from the requirements of sections 5(a) and 5(b) of TSCA to manufacture a new chemical substance for test marketing purposes. The application was assigned test marketing exemption number TM-82-30. The submission is for substituted diyne urethane and will generally be used in a specialty label. The submitter, Allied Corporation, claimed the specific

chemical identity, specific use, production volume, industrial sites, exposure, and process information as confidential business information. The TME substance will be test marketed for a period not to exceed 1 year.

A notice published in the Federal Register of July 12, 1982 (47 FR 30104) announced receipt of this application and requested comment on the appropriateness of granting the exemption. The Agency did not receive any comments concerning the application.

EPA has established that the test marketing of the new chemical substance submitted under TM–82–30 will not present an unreasonable risk of injury to health or to the environment under the specific conditions set out in the application. The Agency did not identify any significant health or ecological concern for the TME substance.

This test marketing exemption is granted based on the facts and information obtained and reviewed, but is subject to all conditions set out in the exemption application and, in particular, those enumerated below.

1. This exemption is granted solely to this manufacturer.

2. The applicant must maintain records of the date(s) of shipment(s) to the customers specified in the application, and the quantities shipped in each shipment, and must make these records available to EPA upon request.

3. Each bill of lading that accompanies a shipment of the substance during the test marketing period must state that the use of the substance is restricted to that described to EPA in the test marketing exemption application.

4. The production volume of the new substance may not exceed the quantity described in the test marketing exemption application.

5. The test marketing activity approved in this notice is limited to a 1-year period commencing on the date of signature of this notice by the Director of the Office of Toxic Substances.

6. The number of workers exposed to the new chemical should not exceed that specified in the application, and the exposure levels and duration of exposure should not exceed those specified in the application.

The Agency reserves the right to rescind its decision to grant this exemption should any new information come to its attention which casts significant doubt on the Agency's conclusion that the test marketing of this substance under the conditions specified in the application will not present an unreasonable risk of injury to human health or the environment.

Dated: August 6, 1982.

Don R. Clay,

Director, Office of Toxic Substances.

[FR Doc. 82–22228 Filed 8–13–82; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 1884]

Air International Dispatch Services and/or A.I.D.S. (Carolina Cartage Company, Inc. d.b.a.); Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Air International Dispatch Services and/or A.I.D.S. (Carolina Cartage Company, Inc. d.b.a.), c/o Flexi-Van Corporation, 330 Madison Avenue, New York, NY 10017–5003 was cancelled effective August 12, 1982.

Donald B. Rynd, Jr., Assistant General Counsel for Flexi-Van Corporation has advised the Commission that it had acquired the licensee and merged it into another of Flexi-Van's subsidiaries, and that that subsidiary was being dissolved. Hence, the licensee no longer is in need of the bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(f) dated November 12, 1981;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 1884 is hereby revoked effective August 12, 1982.

It is ordered, that Independent Ocean Freight Forwarder License No. 1884 issued to Air International Dispatch Services and/or A.I.D.S. (Carolina Cartage Company, Inc. d.b.a.) be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the Federal Register and served upon Air International Dispatch Services and/or A.I.D.S. (Carolina Cartage Company, Inc. d.b.a.).

Robert M. Skall,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 82–22293 Filed 8–13–82; 8:45 am]

BILLING CODE 6730–01–M

[Independent Ocean Freight Forwarder License No. 2147]

Davis Export Consultants International, Inc.; Order of Revocation

On July 22, 1982, Davis Export Consultants International, Inc. c/o Ronald J. Sommers, Esquire, Lackshin & Nathan, The Gibraltar Bldg., 2302 Fannin Street, Houston, TX 77002 requested the Commission to revoke its Independent Ocean Freight Forwarder License No. 2147.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 2147 issued to Davis Export Consultants International, Inc., be revoked effective July 22, 1982.

It is further ordered, that Independent Ocean Freight Forwarder License No. 2147 issued to Davis Export Consultants International, Inc. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the Federal Register and served upon Davis Export Consultants International, Inc.

Robert M. Skall,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 82–22294 Filed 8–13–82; 8:45 am]

BILLING CODE 6730–01–M

[Independent Ocean Freight Forwarder License No. 2303]

Gray International Forwarding, Inc.; Reinstatment of License

By Notice served and published in the Federal Register, Gray International, Inc.'s Independent Ocean Freight Forwarder License No. 2303 was revoked, effective July 3, 1982, for failure to maintain a valid surety bond on file with the Commission. The Notice of Revocation was served on July 12, 1982.

An appropriate surety bond has been received in favor of Gray International Forwarding, Inc. No break in bond coverage has occurred and compliance with section 44, Shipping Act, 1916, and section 510.15 of the Commission's General Order 4 has been achieved.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in § 10.01(a) of Commission Order No. 1 (Revised), dated November 12, 1981, Independent Ocean Freight Forwarder License No. 2303 is hereby reissued to Gray International Forwarding, Inc., effective

July 3, 1982. A copy of this notice shall be published in the **Federal Register** and served upon Gray International Forwarding, Inc.

Robert M. Skall,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 82-22295 Filed 8-13-82; 8:45 am]

BILLING CODE 6730-01-M

Independent Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

Linda Lee Gray d.b.a. Linda Gray Export Service, 312 Virginia Street, El Segundo, CA 90245.

Oscar Shipping, Inc. d.b.a. Cruz Del Sur Shipping, 92–19 Roosevelt Avenue, Jackson Heights, NY 11372.

Officers: Oscar Norberto Perretta, President; Jorge Moreira, Vice President; Marta Perretta, Secretary.

Dated: August 11, 1982.

By the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 82-22296 Filed 8-13-82; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1543]

Tropical Freight Brokers, Inc.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Tropical Freight Brokers, Inc., 8347 NW 36th Street, Miami, FL 33166 was cancelled effective August 7, 1982.

Tropical Freight Brokers, Inc. was telephonically notified on July 9, 1982 that Independent Ocean Freight Forwarder License No. 1543 would be automatically revoked unless a valid surety bond was filed with the Commission. A written notice, sent by certified mail on July 9, 1982, was returned to the Commission by U.S. Postal authorities.

Tropical Freight Brokers, Inc. has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(f) dated November 12, 1981;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 1543 be and is hereby revoked effective August 7, 1982.

It is ordered, that Independent Ocean Freight Forwarder License No. 1543 issued to Tropical Freight Brokers, Inc. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Tropical Freight Brokers, Inc.

Robert M. Skall,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 82-22297 Filed 8-13-82; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Union Illinois Company*, East St. Louis, Illinois; to acquire up to 27 percent of the voting shares of Columbia National Bank, Columbia, Illinois. Comments on this application must be received not later than September 8, 1982.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Assistant Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Colorado National Bankshares, Inc.*, Denver, Colorado; to acquire 100 percent of the voting shares or assets of a de novo bank, Colorado National Bank-Southwest, Jefferson County, Colorado. Comments on this application must be received not later than September 8, 1982.

Board of Governors of the Federal Reserve System, August 10, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-22298 Filed 8-13-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President), 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Peoples National Bancorp., Inc.*, State College, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples National Bank of Central Pennsylvania, State College, Pennsylvania. Comments on this application must be received not later than September 8, 1982.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. *Columbia Bancshares, Inc.*, Columbia, Illinois; to become a bank holding company by acquiring at least

80 percent of the voting shares of Columbia National Bank, Columbia, Illinois. Comments on this application must be received not later than September 8, 1982.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Assistant Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *First Republic Bancshares, Inc.*, Rayville, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of First Republic Bank, Rayville, Louisiana. Comments on this application must be received not later than September 8, 1982.

Board of Governors of the Federal Reserve System, August 10, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-22202 Filed 8-13-82; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares and/or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that request a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President), 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Bath Corporation*, Bath, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Bath, Bath, Pennsylvania. Comments on this application must be received not later than September 9, 1982.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Assistant Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First National Bancshares of Weatherford, Inc.*, Weatherford, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Weatherford, Weatherford, Oklahoma. Comments on this application must be receied not later than September 9, 1982.

c. **Secretary, Board of Governors of the Federal Reserve System,** Washington, D.C. 20551:

1. *Haskell Bancorporation*, Haskell, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of The First Bank of Haskell, Haskell, Oklahoma. The application may be inspected at the Federal Reserve Bank of Kansas City. Comments on this application must be received not later than September 9, 1982.

Board of Governors of the Federal Reserve System, August 10, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-22198 Filed 8-13-82; 8:45 am]

BILLING CODE 6210-01-M

Midlantic Banks, Inc.; Proposed Acquisition of Midlantic/Florida Coast Holdings, Inc.

Midlantic Banks, Inc., Edison, New Jersey, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Midlantic/Florida Coast Holdings, Inc., Edison, New Jersey, and thereby indirectly acquire Florida Coast Midlantic Trust Company, N.A., Lighthouse Point, Florida.

Applicant states that the proposed subsidiary would engage in the activities of a trust company. These activities would be performed from offices of Applicant's subsidiary in Lighthouse Point, Florida, and the geographic areas to be served are Broward and Dade Counties. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question wether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of New York.

Any views or requests for hearing should be submitted in writting and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than September 8, 1982.

Board of Governors of the Federal Reserve System, August 10, 1982.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 82-22204 Filed 8-13-82; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Labeling and Advertising of Home Insulation Rule and Consumer Appliance Energy Labeling Rule; Information Collection Requirement

AGENCY: Federal Trade Commission.

ACTION: Submission to of Information collection requirement to OMB.

SUMMARY: The Federal Trade Commission has applied to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) for clearance of three studies intended to assess the impact of two FTC rules: Appliance Energy Labeling (16 CFR 305); and Labeling and Advertising of Home Insulation (16 CFR 460).

SUMMARY: The purpose of these surveys is to gauge consumers' understanding and use of energy consumption and R-Value labels required by the rules cited above. One study will be used also to assess the projectability of mail panel findings and to determine whether mail panel samples are validly interchangeable.

DATE: Comments on the application for clearance of these three studies must be submitted on or before September 15, 1982.

ADDRESS: Send comments to Ms. Nell Minow, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20503. Copies of this application may be obtained from: Public Reference Branch, Room 130,

Federal Trade Commission, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Thomas J. Maronick, Office of Impact Evaluation, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580 (202) 724–1877.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 82–22090 Filed 8–13–82; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Application of Eleemosynary Institution (GSA Form 18)

AGENCY: General Services Administration.

ACTION: Notice of Information Collection; Extension.

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 the extension of an information collection requirement for the continued collection of data.

DATE: Comments on this information collection must be submitted on or before August 27, 1982.

ADDRESSES: Send comments to Franklin S. Reeder, OMB Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Anthony Artigliere, GSA Clearance Officer, General Services Administration (ORAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: James Flowers, Directives, Reports, and Publications Branch (202–566–1164).

SUPPLEMENTARY INFORMATION:

a. *Purpose.* This reporting requirement is necessary to request the donation of forfeited distilled spirits, wine, or malt beverages. The information is used to determine an institution's eligibility to receive such donations.

b. *Respondents.* Charitable institutions.

c. *Obtaining copy of the proposal.* A copy of the information collection proposal may be obtained from the Directives, Reports, and Publications Branch (ORAI), Room 3011, GS Building, Washington, DC 20405, telephone 566–1164.

Dated: July 30, 1982.

Clarence A. Lee, Jr.,

Director of Administrative Services.

[FR Doc. 82–22231 Filed 8–13–82; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–82–1146]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Robert G. Masarsky, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410; telephone (202) 755–5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from Robert G. Masarsky, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: *Community Development Block Grant Entitlement Grantee Performance Report.*
Office: Community Planning and Development.
Form No.: HUD–4950.1 through HUD–4950.10.
Frequency of Submission: Annually.
Affected Public: State or Local Governments.
Estimated Burden Hours: 164,250.
Status: New.
Contact:
Bob Duncan, HUD, (202) 755–6306
Robert Neal, OMB, (202) 395–6880
(Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Notice of Submission of Proposed Information Collection to OMB

Proposal: *Statement and Voucher for Basic Annual Contribution Leased Housing.*
Office: Housing.
Form No.: HUD–52981.
Frequency of Submission: Annually.
Affected Public: State and Local Governments.
Estimated Burden Hours: 118.
Status: New.
Contact:
Robert Fisher, HUD, (202) 426–1872
Robert Neal, OMB, (202) 395–6880
(Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Notice of Submission of Proposed Information Collection to OMB

Proposal: *Low-Income Public Housing Financial Statements.*
Office: Housing.
Form No.: HUD–52595, HUD–52596, HUD–52599, HUD–52603, and HUD–53049.
Frequency of Submission: Annually, Semi-annually, and On Occasion.
Affected Public: State or Local Governments.
Estimated Burden Hours: 45,591.
Status: New.
Contact:
Robert Fisher, HUD, (202) 426–1872
Robert Neal, OMB, (202) 395–6880
(Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Dated: August 2, 1982.

Donald J. Keuch, Jr.,

Deputy Assistant Secretary for Administration.

[FR Doc. 82–22280 Filed 8–13–82; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N-82-1147]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Robert G. Masarsky, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410; telephone (202) 755-5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from Robert G. Masarsky, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: *Mortgagor's Certificate of Actual Cost.*
Office: Housing.
Form No.: FHA-2330.
Frequency of Submission: On Occasion.
Affected Public: Businesses or Other Institutions (except farms).
Estimated Burden Hours: 6,160.
Status: Extension.
Contact:

William C. Howell, HUD, (202) 426-3543
Robert Neal, OMB, (202) 395-6880

(Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Notice of Submission of Proposed Information collection to OMB

Proposal: *Good Faith Estimate of Settlement Costs.*
Office: Housing.
Form No. None.
Frequency of Submission: On Occasion.
Affected Public: Individuals or Households.
Estimated Burden Hours: 1,250,000.
Status: New.
Contact:

John Coonts, HUD, (202) 755-6720
Robert Neal, OMB, (202) 395-6880

(Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Notice of Submission of Proposed Information collection to OMB

Proposal: *Aplication for Mortgage Insurance.*
Office: Housing.
Form No. HUD-93201.
Frequency of Submission: On Occasion.
Affected Public: Businesses or Other Institutions (except farms).
Estimated Burden Hours: 120.
Status: Reinstatement.
Contact:

H. Beth Marcus, HUD, (202) 755-7191
Robert Neal, OMB, (202) 395-6880

(Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Notice of Submission of Proposed Information collection to OMB

Proposal: *Section 8 Housing Assistance Payments Program and report on Program Utilization-Existing Housing.*
Office: Housing.
Form No. HUD-52683 and HUD-52684.
Frequency of Submission: Quarterly.
Affected Public: State and Local Governments.
Estimated Burden Hours: 24,000.
Status: Extension.
Contact:

Myra E. Newbill, HUD, (202) 755-5434
Robert Neal, OMB, (202) 395-6880

(Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d))

Dated: August 9, 1982.

Judith L. Tardy,
Assistant Secretary for Administration.

[FR Doc. 82-22281 Filed 8-13-82; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Boise District, Idaho, Grazing Advisory Board; Meeting

SUMMARY: In accordance with Pub. L. 92-463 the Federal Advisory Committee Act, and Pub. L. 94-579 the Federal Land Policy and Management Act, notice is hereby given that the Boise District Grazing Advisory Board will meet on September 8, 1982 from 9:00 a.m. to 3:00 p.m.

SUPPLEMENTARY INFORMATION: The meeting will begin at 9:00 a.m. in the conference room at the Bureau of Land Management Boise District Office at 3948 Development Avenue in Boise, Idaho. The agenda includes discussion of the benefit-cost analysis and prioritization of 8100 projects and the distribution of 8100 funds for subsequent years. A public comment period is scheduled for 1:00 to 2:00 p.m.

Further information is available from the Boise District, Bureau of Land Management, 3948 Development Avenue, Boise, Idaho 83705, phone (208) 334-1582. Minutes of the meeting will be available for public inspection at the District Office.

David Brunner,
Associate District Manager.

August 6, 1982.

[FR Doc. 82-22215 Filed 8-13-82; 8:45 am]
BILLING CODE 4310-84-M

[ES 30517, Survey Group 78]

Michigan; Filing of Plat of Survey

1. On November 19, 1981, the plat representing the survey of one island in Lake Huron, which was omitted from the original survey, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m. on November 15, 1982.

The island tract shown below describes the land omitted from the original survey.

Michigan Meridian, Michigan

T. 41 N., R. 2 E.,
Tract No. 37.

2. The island described above is separate and distinct yet similar in all

respects to that of the adjacent surveyed lands.

The island rises approximately 9 feet above the ordinary high water mark of Lake Huron and is composed of a solid boulder.

3. The island described above was found to be over 50 percent upland in character within the purview of the Swamp Land Act of September 28, 1850 (9 Stat. 519). It is, therefore, held to be public land.

4. Except for valid existing rights, the island will not be subject to application, petition, location, or selection under any public law until a further order is issued.

5. All inquiries relating to this island should be sent to the Chief, Division of Lands and Minerals Operations, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304 on or before November 15, 1982.

Jeff O. Holdren,

Chief, Division of Lands and Minerals Operation.

[FR Doc. 82-22209 Filed 8-13-82; 8:45 am]

BILLING CODE 4310-84-M

[ES 30518, Survey Group 78]

Michigan; Filing of Plat of Survey

1. On November 19, 1981, the plat representing the survey of five islands in St. Marys River, which were omitted from the original survey, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m. on November 15, 1982.

The island tracts shown below describe the land omitted from the original survey.

Michigan Meridian, Michigan

T. 47 N., R. 1 E.,
Tract Nos. 37, 38, 39, 40, and 41.

2. The islands described above are separate and distinct yet similar in all respects to that of the adjacent surveyed lands.

The island Tract No. 37 rises approximately 6 feet above the ordinary high water mark of St. Marys River and has a medium layer of soil over a base of rock. Tree species consist of maple, white pine, ash, spruce, and birch, with undergrowth of alder and dogwood.

The island Tract No. 38 rises approximately 4 feet above the ordinary high water mark of St. Marys River and has a medium layer of soil over a base of rock. Tree species consist of cedar, birch, ash, and aspen, with undergrowth of alder and dogwood.

The island Tract No. 39 rises approximately 3 feet above the ordinary high water mark of St. Marys River and has a thin layer of soil over a base of granite. Timber consist of spruce, white pine, cedar, and birch, with undergrowth of alder and dogwood.

The island Tract No. 40 rises approximately 3 feet above the ordinary high water mark of St. Marys River and has a thin layer of soil over a granite base. Tree species consist of spruce, cedar, and birch, with undergrowth of alder and dogwood.

The island Tract No. 41 rises approximately 4 feet above the ordinary high water mark of St. Marys River and has a medium layer of soil over a base of stone. Tree species consist of cedar, balsam firs, birch, and maple, with undergrowth of dogwood, alder, and grass.

3. The islands described above were found to be over 50 percent upland in character within the purview of the Swamp Land Act of September 28, 1850 (9 Stat. 519). They are, therefore, held to be public land.

4. Except for valid existing rights, the lands will not be subject to application, petition, location, or selection under any public law until a further order is issued.

5. All inquiries relating to these lands should be sent to the Chief, Division of Lands and Minerals Operations, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304 on or before November 15, 1982.

Jeff O. Holdren,

Chief, Division of Lands and Minerals Operations.

[FR Doc. 82-22210 Filed 8-13-82; 8:45 am]

BILLING CODE 4310-84-M

[ES 30514, Survey Group 78]

Michigan; Filing of Plat of Survey

1. On November 19, 1981, the plat representing the survey of 2 islands in Lake George, which were omitted from the original survey, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m. November 15, 1982.

The island tracts shown below describe the land omitted from the original survey.

Michigan Meridian, Michigan

T. 46 N., R. 2 E.,
Tract Nos. 37 and 38.

2. The islands described above are separate and distinct yet similar in all respects to that of the adjacent surveyed lands.

The island Tract No. 37 rises approximately 3 feet above the ordinary high water mark of Lake George and has a thin layer of soil over a base containing many large boulders. Tree species consist of birch, ash, maple, balsam fir, cedar, and spruce, with undergrowth of alder and willow.

Island Tract No. 38 rises approximately 10 feet above the ordinary high water mark of Lake George and is composed of a rocky base over various sized boulders and a thin layer of soil. Tree species consist of birch, cedar, elm, maple, and cherry, with undergrowth of leatherleaf and willow. 3. The islands described above were found to be over 50 percent upland in character within the purview of the Swamp Lands Act of September 28, 1850 (9 Stat. 519). They are, therefore, held to be public land.

4. Except for valid existing rights, the islands will not be subject to application, petition, location, or selection under any public law until a further order is issued.

5. All inquiries relating to these islands should be sent to the Chief, Division of Lands and Minerals Operations, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304 on or before November 15, 1982.

Jeff O. Holdren,

Chief, Division of Lands and Minerals Operations.

[FR Doc. 82-22211 Filed 8-13-82; 8:45 am]

BILLING CODE 4310-84-M

[ES 30515, Survey Group 78]

Michigan; Filing of Plat of Survey

1. On November 19, 1981, the plat representing the survey of two islands in St. Marys River, which were omitted from the original survey, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m. on November 15, 1982.

These tracts shown below describe the lands omitted from the original survey.

Michigan Meridian, Michigan

T. 45 N., R. 2 E.,
Tract Nos. 37 and 38.

2. The islands described above are separate and distinct yet similar in all respects to that of the adjacent surveyed lands.

a. The island Tract No. 37 rises approximately 3 feet above the ordinary high water mark of St. Marys River and has a soil composition of stony loam over a rocky base. Timber consists of maple, ash, balsam fir, and birch, with undergrowth consisting of grass, willow, alder, and balsam fir saplings.

b. The island Tract No. 38 rises approximately 3 feet above the ordinary high water mark of St. Marys River and has a soil composition of stony loam.

Tree species consist of maple, ash, balsam fir, and birch. Borings showed trees up to 70 years old. Undergrowth consists primarily of grass, willow, and balsam fir.

3. The islands described above were found to be over 50 percent upland in character within the purview of the Swamp Lands Act of September 28, 1850 (9 Stat. 519). They are, therefore, held to be public land.

4. Except for valid existing rights, these islands will not be subject to application, petition, location, or selection under any public law until a further order is issued.

5. All inquiries relating to these islands should be sent to the Chief, Division of Lands and Minerals Operations, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304 on or before November 15, 1982.

Jeff O. Holdren,

Chief, Division of Lands and Mineral Operations.

[FR Doc. 82-22212 Filed 8-13-82; 8:45 am]

BILLING CODE 4310-84-M

[ES 30503, Survey Group 78]

Michigan; Filing of Plat of Survey

1. On November 19, 1981, the plat representing the survey of 2 islands in Lake Huron, which were omitted from the original survey, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m. on (90 days from date of publication).

The tracts shown below describe the lands omitted from the original survey.

Michigan Meridian, Michigan

T. 41 N., R. 6 E.,
Tract Nos. 37 and 38.

2. The islands are separate and distinct yet similar to that of the adjacent surveyed lands.

a. Tract 37 rises approximately 2 feet above the ordinary high water mark of Lake Huron and has a soil composition of humus over a base of bedrock. Timber consists of cedar, balsam fir, spruce, tamarack, and birch. The undergrowth is comprised primarily of dogwood and small trees.

b. Tract 38 rises approximately 4 feet above the ordinary high water mark of Lake Huron and has a soil composition of stony loam. Many large boulders are scattered over the island. Tree species consist of cedar, spruce, balsam fir, and birch. Borings showed trees to be up to 60 years old.

3. The tracts described above were found to be over 50 percent upland in character within the purview of the Swamp Lands Act of September 28, 1850 (9 Stat. 519). They are, therefore, held to be public land.

4. Except for valid existing rights, these islands will not be subject to application, petition, location, or selection under any public law until a further order is issued.

5. All inquiries relating to these islands should be sent to the Chief, Division of Lands and Minerals Operations, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, on or before November 15, 1982.

Jeff O. Holden,

Chief, Division of Lands and Minerals Operations.

[FR Doc. 82-22213 Filed 8-13-82; 8:45 am]

BILLING CODE 4310-84-M

[ES 30507, Survey Group 78]

Michigan; Filing of Plat of Survey

1. On November 19, 1981, the plat representing the survey of three islands in St. Marys River, which were omitted from the original survey, was accepted. It will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m. on November 15, 1982.

The tracts shown below describe the islands omitted from the original survey.

Michigan Meridian, Michigan

T. 42 N., R. 4 E.,
Sec. 16, Lots 2, 3; and Tract No. 37.

2. The islands described above are separate and distinct yet similar in all respects to that of the adjacent surveyed lands.

a. Lot 2, Sec. 16, rises approximately 6 feet above the ordinary high water mark of St. Marys River and has a soil composition of stony loam over glacial-till. Timber consists of cedar, spruce, birch, and balsam fir. Borings showed trees to be up to 70 years old. Large boulders were found on the island.

b. Lot 3, Sec. 16, rises approximately 3 feet above the ordinary high water mark of St. Marys River and is composed of a solid boulder.

c. The island Tract No. 37 rises approximately 10 feet above the ordinary high water mark of St. Marys River and has a soil composition of humus over glacial-till. Tree species consist of elm, birch, ash, and cedar. Borings showed trees to be up to 70 years old. Large boulders were found on the island.

3. The islands described above were found to be over 50 percent upland in character within the purview of the Swamp Lands Act of September 28, 1850 (9 Stat. 519). They are, therefore, held to be public land.

4. Except for valid existing rights, the islands will not be subject to application, petition, location, or selection under any public law until a further order is issued.

5. All inquiries relating to these islands shoudl be sent to the Chief, Division of Lands and Minerals Operations, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304 on or before November 15, 1982.

Jeff O. Holdren,

Chief, Division of Lands and Minerals Operations.

[FR Doc. 82-22214 Filed 8-13-82; 8:45 am]

BILLING CODE 4310-84-M

[Nev-051739, Nev-054629, Nev-055233, N-7468]

Nevada; Proposed Continuation of Withdrawals

August 4, 1982.

In accordance with the provisions of Sec. 204 of the Federal Land Policy and Management Act, the Bureau of Land Management (BLM) is reviewing for possible continuation four existing Wildlife Management Area withdrawals as described below:

Nev-051739—Railroad Valley Wildlife Management Area

Mount Diablo Meridian

T. 7 N., R. 55 E., (unsurveyed)
Sec. 15, Lots 16, 21, 28;
Sec. 22, W½;
Sec. 27, W½.
T. 8 N., R. 55 E.,
Sec. 13, S½S½;
Sec. 14, S½S½;
Sec. 23, N½;
Sec. 24, A11.
T. 8 N., R. 56 E.,
Sec. 1, SW¼;
Sec. 2, Lots 1 thru 4, S½N½, S½;
Sec. 3, Lots 1 thru 4, S½N½, S½;
Sec. 9, E½;
Sec. 10, Lots 11, 14, 15;
Sec. 12, NW¼;
Sec. 16, E½;
Sec. 18, Lot 4, SE¼SW¼;
Sec. 19, Lots 1 thru 4, E½W½.
T. 9 N., R. 56 E.,
Sec. 34, S½;
Sec. 35, S½.
T. 8 N., R. 57 E.,
Sec. 2, Lots 3 and 4, S½NW¼, N½SW¼, SW¼SW¼;
Sec. 3, Lots 1 thru 4, S½N½, S½;
Sec. 4, Lots 1 thru 4, S½N½, S½;
Sec. 9 and 16;
Sec. 10, N½, SW¼;
Sec. 11, N½NW¼, SW¼NW¼;
Sec. 15, W½.
T. 9 N., R. 57 E.,
Sec. 33, S½;
Sec. 34, S½.

The area described contains 14,720 acres in Nye County, Nevada.

Nev-054629—Wayne Kirch Wildlife Management Area

Mount Diablo Meridian

T. 5 N., R. 60 E.,
Sec. 1, Lots 1, 2, SW¼NE¼, NW¼SW¼;
Sec. 2, SE¼SE¼;
Sec. 11, E½NE¼;
Sec. 12, SW¼;
Sec. 13, N½NW¼.
T. 6 N., R. 60 E.,
Sec. 36, SE¼SE¼.
T. 6 N., R. 61 E.,
Sec. 1, Lot 4, SW¼NW¼;
Sec. 2, Lots 1, 3, 4, SE¼NE¼, SW¼NW¼, W½SE¼;
Sec. 3, S½;
Sec. 4, S½SW¼, NE¼SW¼, SE¼;
Sec. 5, SE¼SE¼;
Sec. 7, SE¼SE¼;
Sec. 8, S½NE¼, NE¼NE¼, SE¼NW¼, E½SW¼, SW¼SW¼, W½SE¼, NE¼SE¼;
Sec. 10, NE¼, E½NW¼;
Sec. 11, W½NE¼, SE¼NW¼, SE¼SW¼;
Sec. 14, NW¼;
Sec. 15, SE¼;
Sec. 18, Lot 1, NW¼NE¼, NE¼NW¼, NE¼SE¼;
Sec. 20, SW¼NW¼, W½SW¼;
Sec. 22, E½NE¼, SW¼NE¼, SE¼NW¼, E½SW¼, SW¼SW¼;
Sec. 28, E½NE¼, SW¼NE¼, SW¼;
Sec. 29, SE¼SE¼;
Sec. 30, E½SE¼;
Sec. 31, Lot 3;
Sec. 32, NW¼NE¼, E½NW¼.
T. 7 N., R. 61 E.,
Sec. 25, S½NE¼, NE¼SW¼, S½SW¼, NW¼SE¼;
Sec. 35, E½NE¼, SW¼NE¼, SW¼;
Sec. 36, E½NE¼, SW¼NE¼, NW¼NW¼, E½SW¼, SE¼.
T. 7 N., R. 62 E.,
Sec. 30, Lot 4, SE¼SW¼, SW¼SE¼;
Sec. 31, Lots 1 thru 4, NE¼, E½W½, NE¼SE¼, W½SE¼;
Sec. 32, W½NW¼, NW¼SW¼.

The area described contains 5,593.27 acres in Nye County, Nevada.

Nev-055233—Alkali Lake Wildlife Management Area

Mount Diablo Meridian

T. 12 N., R. 23 E.,
Sec. 1, Lots 1 thru 4, S½N½, N½SW¼, SE¼SW¼, SE¼;
Sec. 2, Lots 1 thru 4, S½N½, SW¼, N½SE¼;
Sec. 3, Lots 1, 2, S½NE¼, S½SW¼, SE¼;
Sec. 12, E½, E½NW¼, SW¼.
T. 13 N., R. 23 E.,
Sec. 34, S½SE¼;
Sec. 35, S½NE¼, NE¼SW¼, S½SW¼, SE¼;
Sec. 36, S½N½, S½.
T. 12 N., R. 24 E.,
Sec. 6, Lots 3 thru 7, SE¼NW¼, NE¼SW¼.
T. 13 N., R. 24 E.,
Sec. 31, Lots 3, 4, E½SW¼.

The area described contains 3,487.80 acres in Lyon County, Nevada.

Np7468—Ash Meadows Pupfish Wildlife Management Area

Mount Diablo Meridan

T. 17 S., R. 50 E.,
Sec. 14, Lot 11;
Sec. 35, S½NE¼SE¼, SE¼SE¼, SW¼NE¼.

The area described contains 136.84 acres in Nye County, Nevada.

The Bureau of Land Management proposes continuation of the above described lands for a period of 20 years. The purpose of these four withdrawals is to provide water habitat resources in Nevada for the protection of waterfowl and fish.

The withdrawals close the described lands to all forms of appropriation under the public land laws, including the mining laws, but not to leasing under the mineral leasing laws. The land would remain open to use under lease, license or permit and disposal of mineral and mining resources under other authority than the mining laws. However, mineral leasing and other leases, licenses and permits would be issued only if the proposed use would not interfere with the value of the resources or the proper management of the land. No change in the segregative effect or use of the land would be effected by the continuation.

Notice is hereby given that a public hearing may be afforded in connection with proposed withdrawal continuations. All interested persons who desired to be heard on the proposal must submit a written request for a hearing to the undersigned on or before November 15, 1982. Upon a determination by the State Director, Bureau of Land Management, that a public hearing should be held, a notice will be published in the Federal Register giving the time and place of such hearing. Public hearings will be scheduled and conducted in accordance with BLM Manual 2351.16B.

Additionally, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned authorized officer of the BLM within ninety (90) days.

The authorized officer of the BLM will undertake such investigations as are necessary and prepare a report for consideration by the Office of the Secretary of the Interior. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

All communications in connection with this proposed withdrawal continuation should be addressed to the undersigned officer, Bureau of Land Management, P.O. Box 12000, Reno, Nevada 89520.

Wm. J. Malencik,

Acting Chief, Division of Operations.

[FR Doc. 82-22222 Filed 8-13-82; 8:45 am]

BILLING CODE 4310-84-M

[N-36552]

Nevada; Order Providing for Opening of Public Lands

August 5, 1982.

In an exchange of lands under the provisions of section 8 of the Act of June 28, 1934, as amended, the following described lands were reconveyed to the United States:

Mount Diablo Meridian, Nevada

T. 26 N., R. 18 E.,
Sec. 35, NE¼.

The area described comprises 160 acres. The lands lie in Washoe County, Nevada.

All minerals were reconveyed to the United States.

At 9:00 a.m. on September 15, 1982, subject to valid existing rights and any existing classification, the land described above is hereby restored generally to the operation of the public land laws.

All valid applications received from the date of this publication until and including 9:00 a.m. on September 15, 1982, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 9:00 a.m. on September 15, 1982, the land shall be open to location and entry under the United States mining and mineral leasing laws.

Inquiries concerning this land should be addressed to District Manager, Bureau of Land Management, 1050 E. William, Carson City, Nevada 89701.

William K. Stowers,

Acting Chief, Division of Operations.

[FR Doc. 82-22221 Filed 8-13-82; 8:45 am]

BILLING CODE 4310-84-M

Minerals Management Service

Arizona; Known Geothermal Resources Area

Pursuant to the authority vested in the Secretary of the Interior by Sec. 21 (a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), and delegations of authority in 220 Departmental Manual 4.1 H, Geological Survey Manual 220.2.3, Conservation Division Supplement (Geological Survey Manual) 220.2.1 G, and Secretarial Order

3071, the following described lands are hereby revoked as the Gillard Hot Springs Known Geothermal Resources Area, effective July 23, 1982:

(3) Arizona:

Gillard Hot Springs Known Geothermal Resources Area

Gila and Salt River Meridian, Arizona

T 5 S., R. 29 E.,
Sec. 21, S½;
Sec. 22;
Sec. 23, S½;
Sec. 26, N½, SW¼, SW¼SE¼;
Sec. 27, N½, SW¼, N½SE¼, SE¼SE¼;
Sec. 28, N½, NE¼SE¼;
Sec. 35, N½N½.

The revoked area described aggregates 2,920 acres, more or less.

Dated: August 4, 1982.

Richard M. Bloyd,

Minerals Manager, Western Region.

[FR Doc. 82-22216 Filed 8-13-82; 8:45 am]

BILLING CODE 4310-MR-M

California; Known Geothermal Resource Area

Pursuant to the authority vested in the Seretary of the Interior by Sec. 21(a) of the Geothermal Steam Act of 1970 (84 Stat. 1566, 1572; 30 U.S.C. 1020), and delegations of authority in 220 Departmental Manual 4.1 H, Geological Survey Manual 220.2.3, Conservation Division Supplement (Geological Survey Manual) 220.2.1 G, and Secretarial Order 3071, the following described lands are hereby revoked as the Witter Springs Known Geothermal Resources Area, effective August 6, 1982:

(5) California:

Witter Springs Known Geothermal Resources Area

Mount Diablo Meridian, California

T. 15 N., R. 10 W.,
Secs. 2 through 10;
Secs. 15 through 17.
T. 15 N., R. 11 W.,
Secs. 1 and 2;
Sec. 3, SE¼SE¼;
Sec. 10, NE¼NE¼;
Secs. 11 through 13;
Sec. 14, NE¼, N½NW¼, N½SE¼, SE¼SE¼;
Sec. 24, lot 1, NW¼NW¼.
T. 16 N., R. 11 W.,
Secs. 13 through 15;
Secs. 22 through 27;
Sec. 34, N½, NW¼SW¼;
Secs. 35 and 36.

The revoked area described aggregates 18,770 acres, more or less.

Dated: August 4, 1982.

Richard M. Bloyd,

Minerals Manager, Western Region.

[FR Doc. 82-22217 Filed 8-13-82; 8:45 am]

BILLING CODE 4310-MR-M

Office of the Secretary

Extension of Comment Period on the Status of Kuwait Under the Mineral Lands Leasing Act

AGENCY: Interior Department.

ACTION: Extension of the comment period on the status of Kuwait under the Mineral lands Leasing Act.

SUMMARY: The Department of the Interior requested in a notice in the **Federal Register** of July 8, 1982 (47 FR 29720), that the public submit written comments on the status of Kuwait, Sweden and Cyprus under the Mineral Lands Leasing Act. As a result of the requests for an extension of the comment period in the case of Kuwait, the Department has decided to extend the comment period on the status of Kuwait only.

DATE: Comments should be submitted by October 8, 1982. Comments received after that date may be considered depending upon the status of the review when received.

ADDRESS: Comments should be sent to: Director (503), Bureau of Land Management, 1800 C Street, NW., Washington, DC. 20240. Comments will be available for public review in Room 7225 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mark A. Alexander (202) 343-3352.

David G. Houston,

Deputy Assistant Secretary of the Interior.

August 11, 1982.

[FR Doc. 82-22349 Filed 8-13-82; 8:45 am]

BILLING CODE 4310-10-M

INTERSTATE COMMERCE COMMISSION

Motor Carrier Temporary Authority Application

The following are notices of filing of applications for temporary authority under Section 10928 of the Interstate Commerce Act and in accordance with the provisions of 49 CFR 1131.3. These rules provide that an original and two (2) copies of protests to an application may be filed with the Regional Office named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register.** One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the ICC Regional Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

Notice No. F-193

The following applications were filed in Region 2. Send protests to ICC, Federal Reserve Bank Building., 101 North 7th St., Rm. 620, Philadelphia, PA 19106.

MC 158522 (Sub-II-9TA), filed August 2, 1982. Applicant: PAUL E. ACE TRUCKING, INC., 930 Clay Ave., Stroudsburg, PA 18360. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. *Textile products and related commodities,* between Buncombe County, NC, Hamblen County, TN, Lexington County, SC and Anderson County, SC on the one hand, and, on the other, points in PA. Between Monroe County, PA on the one hand, and, on the other, New York, NY for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Orbit Industries, Ltd., 3475 3rd Ave., Bronx, NY 10456.

MC 163121 (Sub-II-1TA), filed July 26, 1982. Applicant: THOMAS C. BAILEY and VERNON M. BAILEY, d.b.a. BAILEY ENTERPRISE, 835 Ruthers Road, Richmond, VA 23235. Representative: Paul D. Collins, 7761 Lakeforest Drive, Richmond, VA 23235.

Contract, irregular: *bottled and canned non-alcoholic beverages, plastic and glass bottles, cans and can ends; and liquid sugar and fructose,* in bulk, in tank vehicles, between Richmond and Norfolk, VA, on the one hand, and, on the other, Dover, DE; Baltimore, Harve de Grace, & Salisbury, MD; Bridgeton, NJ; Brooklyn, NY; Henderson & Winston-Salem, NC; Pottsville and Scranton, PA; Cheraw & Greenville, SC., under continuing contracts with Royal Crown Bottlers of Virginia, Norfolk, VA for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Royal Crown Bottlers of VA, 711 West 24th St., Norfolk, VA 23517.

MC 163012 (Sub-II–1TA), filed August 2, 1982. Applicant: CHARLES DOUGLAS AND COMPANY, INC., 6807 Haycock Rd., Falls Church, VA 22043. Representative: Barry Weintraub, Suite 510, 8133 Leesburg Pike, Vienna, VA 22180. *Contract, irregular; automobiles, in truckaway service, in initial movements, in specialized equipment* between Pompano Beach, FL on the one hand, and, on the other, points in the U.S. (except AK and HI) under continuing contracts with Zimmer Motor Corp. of Pomano Beach, FL, for 270 days. An underlying ETA seeks 120 days authority. Applicant intends to interline at Atlanta and Marietta, GA and St. Louis, MO. Supporting shipper: Zimmer Motor Corp. 777 Southwest 12th Ave., Pomano Beach, FL 33060.

MC 127900 (Sub-II–1TA), filed August 2, 1982. Applicant: GROOME TRANSPORTATION, INC., P.O. Box A–23, Richmond, Virginia 23231. Representative: Dennis Dean Kirk, Esq., Suite 929, Pennsylvania Building, 425 13th Street, N.W., Washington, D.C.20004. *General commodies* (except classes A and B explosives, household goods, commodities in bulk, and those commodities which because of their size or weight require the use of special handling or equipment), between points in the U.S. (except AK and HI), under continuing contract(s) with the Charlotte Freight Association and Belk Stores Services, Inc. for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper(s): Charlotte Freight Association, P.O. Box 26007, Chalotte, NC 28213; Belk Stores Services, Inc., 3105 D. Ashbury, Charlotte, NC 28208.

MC 124017 (Sub-II–2TA), filed August 2, 1982. Applicant: R. JEFFREY & SONS, INC., R.D. #1, Elysburg, PA 17824. Representative: J. Bruce Walter, P.O. Box 1146, Harrisburg, PA 17120. *Primary metal products,* in bulk, in dump vehicles between Port of Entry at Niagara Falls, NY, on the one hand, and, on the other, Middlesex County, NJ, for 270 days. Supporting shipper: Metz Metalurgical Corp., 3900 S. Clinton Avenue, S. Plainfield, NJ 07080.

MC 128302 (Sub-II–11TA), filed August 2, 1982. Applicant: THE MANFREDI MOTOR TRANSIT CO., 14841 Sperry Rd., Newbury, OH 44065. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215. *Contract, irregular; general commodities* (except classes A and B explosives and household goods as defined by the Commission) between points in in the U.S. (except AK and HI) under continuing contracts with Roquette Corporation, for 270 days. Supporting shipper: Roquette Corporation, Olympic Tower, 645 Fifth Avenue, New York, NY 10022.

MC 143406 (Sub-II–3TA), filed August 2, 1982. Applicant: MICHEL PROPERTIES, INC., Stenersen Lane, Cockeysville, MD 21030. Representative: Walter T. Evans, 4304 East-West Highway, Bethesda, MD 20814. *Contract* irregular: *Boxes, other than corrugated* from Springdale, OH, to Camden, Hillside, Jersey City and New Brunswick, NJ, Mountain Top, Pottstown, Doylestown, Downingtown and Philadelphia, PA, Crisfield and Baltimore, MD, Raleigh, NC, and Boston, Gloucester and Woburn, MA, under continuing contract with International Paper Company, for 270 days. Supporting shipper: International Paper Company, International Paper Plaza, 77 West 45th Street, New York, NY 10036.

MC 163209 (Sub-II–1TA), filed July 30, 1982. Applicant: MILK TRANSPORT, INC., P.O. Box 550, Cranberry Road, Grove City, PA. 16217. Representative: Henry M. Wick, Jr., 2310 Grant Building, Pittsburgh, PA 15219. *Cheese,* from the plantsite of Farmer's Cheese Co-op Ass'n, Wilmington Township, Lawrence County, PA to points in CT, KY, ME, MD, MA, MI, NH, NJ, NY, OH, RI, VT, VA, WV, and DC for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Farmer's Cheese Co-op Ass'n, R.D. 1, New Wilmington, PA. 16142.

MC 107012 (Sub-II–230TA), filed August 2, 1982. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns (same as Applicant). Contract irregular: *General commodities* (except household goods, classes A & B explosives, and commodities in bulk) between points in the U.S., under continuing contract(s) with Acme Visible Records, Inc., of Crozet, VA for 270 days. Supporting shipper: Acme Visible Records, Inc., 8900 Allview Drive, Crozet, VA 22932.

MC 107012 (Sub-II–231TA), filed August 2, 1982. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Highway 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns (same as Applicant). Contract irregular: *General commodities* (except household goods, classes A & B explosives, and commodities in bulk) between points in the U.S., under continuing contract(s) with Elxsi of Santa Clara, CA for 270 days. Supporting shipper: Elxsi, 3410 Central Exressway, Suite 201, Santa Clara, CA 95051.

MC 163239 (Sub-2–1TA), filed August 2, 1982. Applicant: LAWRENCE W. PONZEK, LAWRENCE PONZEK, BARTHOLOMEW PONZEK, PAUL PONZEK, d.b.a. PON-X TRANSPORT, 1019 New Market Street, Philadelphia, PA 19123. Representative: Alan Kahn, 1430 Land Title Bldg., Philadelphia, PA 19110. *Chemicals and related products* (except in bulk), Between the facilities of Phipps Products Corp. and Spirit Fluid Packaging Corp. at Philadelphia, PA, on the one hand, and, on the other, points in CT, DE, MA, MD, NJ, VA, and WV for 270 days. An underlying ETA seeks 120 days' authority. Supporting shipper(s): Phipps Products Corp., 980 North Delaware Avenue, Philadelphia, PA 19123; Spirit Fluid Packaging Corp., 918 North Delaware Avenue, Philadelphia, PA 19123.

MC 149108 (Sub-II–2TA), filed July 28, 1982. Applicant: R. REED TRUCKING, INC., 8383 Croton Road, Johnstown, OH 43031. Representative: Boyd B. Ferris, 50 W. Broad St., Columbus, OH 43215. *Ceneral commodities,* except household goods, commodities in bulk and classes A and B explosives, between points in the U.S. in and east of ND, SD, NE, KS, OK, and TX for 270 days. An underlying eta seeks 120 days authority. Supporting shipper: Sysco Corporation, 1177 West Loop S., Houston, TX 77027.

The following applications were filed in Region 3. Sent protests to ICC, Regional Authority Center, Room 300, 1776 Peachtree Street N.E., Atlanta, GA 30309.

MC 145375 (Sub-3–3TA), filed August 3, 1982. Applicant: H. D. EDGAR TRUCKING COMPANY, Route 1, Box 48, Opp, AL 36467. Representative: Chester A Zyblut, 366 Executive Bldg., 1030 Fifteenth St., N.W., Washington, D.C. 20005. *Building materials and related commodities,* between Dothan, AL, and points in the commercial zone, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Supporting shipper: Slimfold Manufacturing Company, Inc., 510 Murrary Rd., P.O. Box 6416, Dothan, AL 36302.

MC 145956 (Sub-3–5TA), filed August 4, 1982. Applicant: TRANSMEDIC CARRIERS, INC., 1340 Indian Rock Road, Belleair, FL 33516. Representative: Paul Meilleur (same address as applicant). *Blood, derivatives of blood, plasma, medical and dental products, and materials, equipment and supplies used in connection therewith,* between points in the U.S. restricted to shipments originating at or destined to the facilities of Merck, Sharp & Dohme, division of Merck & Co., Inc. Supporting shipper: Merck, Sharp, & Dohme, Division of Merck & Company, Inc., West Point, PA 19486.

MC 160199 (Sub-3–3TA), filed August 5, 1982. Applicant: COOKE TRUCKING COMPANY, INC., Rt. 1, Box 128–A, Mt. Airy, NC. 27030. Representative: D. R. Beeler, P.O. Box 482, Franklin, TN 37064. *Contract carrier;* irregular routes; *Electrical appliances and materials and supplies used in the manufacture, distribution, and sale thereof* between Baltimore, MD, Altoona, PA, Mt. Airy and Southern Pines, NC, on the one hand, and, on the other, points in the U.S., (except AK and HI) under continuing contract(s) with SCM Corporation, Proctor-Silex Group. Supporting shipper: SCM Corporation, Proctor-Silex Group, 2209 Sulphur Springs Road, Landsdown, MD 21227.

MC 162900 (Sub-3–1TA), filed August 5, 1982. Applicant: BEN R. COX d.b.a. COX TRUCKING COMPANY, 414 South Rd., High Point, NC 27260. Representative: Jack L. Schiller, 123–60 83rd Ave., Kew Gardens, NY 11415. *Contract,* irregular: *New furniture and machinery and equipment, and materials and supplies used in the manufacturing and sale of new furniture* from the facilities of High Point Furniture Industries, Inc. located at or near High Point, NC to points in FL, Atlanta, GA, New Orleans and Shreveport, LA, Laurel, MD, St. Louis, MO, Tupelo, MS, Cincinatti, OH, Oklahoma City and Tulsa, OK, Philadelphia, PA and Memphis, TN under account with High Point Furniture Industries, Inc. of High Point, NC. Supporting Shipper: High Point Furniture Industries, Inc., Corporation Drive, High Point, NC.

MC 121396 (Sub-3–3TA), filed August 5, 1982. Applicant: GOGGIN TRUCK LINE CO., INC., P.O. Box 1067, Cedar King Rd., Shelbyville, TN 37160. Representative: Bill Jackson, 3426 N. Washington Blvd., Arlington, VA 22210. *Common carrier, regular route, general commodities (except classes A and B explosives, household goods and commodities in bulk).* (1) Between Nashville, TN and Rocky Mount, NC, from Nashville, TN over interstate highway 24 to interstate highway 75, then over interstate 75 to interstate highway 40, then over interstate highway 40 to interstate highway 64, then over interstate highway 64 to Rocky Mount, NC, and return; and (2) Between Nashville, TN and Charleston, SC, from Nashville over interstate highway 40 to interstate highway 26, then over interstate highway 26 to Charleston, SC, serving all intermediate points in (1) and (2) above, and all points in NC, SC, and TN, as off-route points.

Note.—Applicant seeks authority to tack to existing authority in MC–121396 and applicant seeks authority to interline at all points presently served and all points covered in above described authority.

MC 94350 (Sub-3–5TA), filed August 5, 1982. Applicant: TRANSIT HOMES, INC., P.O. BOX 1628, Greenville, SC 29602. Representative: Jack H. Hobson, P.O. Box 37, Elkhart, IN 46515. *Motor homes and van conversions* from Elkart County, IN to points in the U.S. There are seven support statements attached to this application which may be examined at the ICC Regional Office, Atlanta, GA.

MC 156839 (Sub-3–3TA), filed August 5, 1982. Applicant: RICHARD WITTEVEEN, d.b.a. WITTMARK ASSOCIATES, 911 Kelton Pl., High Point, N.C. 27260. Representative: David P. Senkpiel, 420 Manor Dr., High Point, NC 27260. *Contract* Carrier: Irregular: *New furniture, Materials, Equipment, Supplies used in the manufacturing and distribution thereof* between Dillon, SC and points in the U.S. Under a continuing contract with Dillon Furniture Manufacturing Co., Dillon, SC, 29536. Supporting shipper: Dillon Furniture Manufacturing Co., North First Street, Dillon, SC 29536.

The following applications were filed in Region 4. Send protest to: ICC, Complaint and Authority Branch, P.O. Box 2980, Chicago, IL 60604.

MC 119043, (Sub-4–2TA), filed August 2, 1982. Applicant: MELVIN MALBRAATEN, Rt. 9 Box 520, Bemidji, MN 56601. Representative: Daryl Malbraaten, Rt. 4 Box 80, Bemidji, MN 56601. Transporting *lumber and wood products and building materials,* Between points in MN on the one hand, and on the other, points in WI, MI, IL, IN, OH, KY, TN, AR, AL, TX, OK, KS, MO, *AND building materials,* between points in MN, on the one hand, and on the other, points in IA, ND, SD, NE, and MA. Supporting shippers: Northland Hardwood Lbr., P.O. Box 1470, Bemidji, MN 56601; C. Baumgarten & Son, P.O. Box 3014, Duluth, MN 55803; Red Lake Mills, Redby, MN 56670; FinMac Ltd., P.O. Box 105, Winnipeg, Manitoba R3C 2G1.

MC 136699 (Sub-4–1TA), filed August 2, 1982. Applicant: ROBERT ASCHENBRENNER, d.b.a. BOB'S TRUCKING, P.O. Box 37, Surrey, ND 58785. Representative: Harris P. Kenner, 615 S. Broadway, P.O. Box 970, Minot, ND 58701. *Contract Carrier:* irregular routes: *Cartons and products for processing and packaging dairy and related products* from Kansas City, KS to points in ND under continuing contract with Bridgeman Creameries, a Division of Land O'Lakes, Inc. of P.O. Box 116, Minneapolis, MN 55440. Supporting shipper: Bridgeman Creameries, a Division of Land O'Lakes, Inc., P.O. Box 116, Minneapolis, MN 55440.

MC 144927 (Sub-4–18TA), filed August 3, 1982. Applicant: REMINGTON FREIGHT LINES, INC., Box 315, U.S. 24 West, Remington, IN 47977. Representative: Jack Luck (address same as applicant). *Drugs, medicines, and related printed advertising matter* from the plantsite of Merck Sharp & Dohme at West Point, PA, to the facilities of Merck & Company at St. Louis, MO. Supporting shipper: Merck Sharp & Dohme, Sumneytown Pike, West Point, PA 19486.

MC 154645 (Sub-4–2TA), filed August 2, 1982. Applicant: JOHN FINK TRUCKING, INC., Route 1, Darlington, WI 53530. Representative: James A. Spiegel, Attorney, Olde Towne Office Park, 6333 Odana Rd., Madison, WI 53719. *Petroleum and related products in bulk in tank vehicles* between Darlington, Belmont and Gratiot, WI, OTOH and, OTO points within IA and IL. Restriction: restricted to shipments terminating at the facilities owned or used by Lafayette County Coop Oil Co. Supporting shipper: Lafayette County Coop Oil Co., 211 Main St., Darlington, WI 53530.

MC 161673, (Sub-4–2TA), filed August 3, 1982. Applicant: RAILHEAD CARTAGE, INC., 10742 South Western Ave., Chicago, IL 60643. Representative: Anthony E. Young, 29 South LaSalle St., Suite 350, Chicago, IL 60603; 312/782–8880. *General commodities* (except Classes A and B explosives, household goods, and commodities in bulk) between Chicago, IL and its commercial zone, on the one hand, and on the other, points in IL, IN, IA, MI, and WI. Supporting shippers: Acme Fast Freight,

Inc., 2641 South Leavitt Ave., Chicago, IL 60608; L & D Associates, Inc., 201 East Ogden Ave., Suite 15, Hinsdale, IL 60521; L & J Transportation Consultants, Inc., 7667 West 95th St., Suite 6E, Hickory Hills, IL 60457; Transportation Rail Services, 3750 West 47th St., Chicago, IL 60632.

MC 162635 (Sub-4–1TA), filed August 3, 1982. Applicant: RON ABRAMS, d.b.a. ABRAMS TRUCKING, 743 West 11th St., Rushville, IN 46173. Representative: (same as above). *General commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in Rush County, IN, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shipper: The Trame Co., 1300 N. Benjamin , Rushville, IN. 46173.

MC 163076 (Sub-4–1TA), filed August 2, 1982. Applicant: HOFSTRAND TRANSPORTS, Box 581, Custer, SD 57730. Representative: Craig Hofstrand, Box 581, Custer, SD 57730. *General Commodities* in shipments weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the Continental U.S. Supporting shipper: Black Hills Power And Light Company, P.O. Box 1400, Rapid City, SD, 57709.

MC 163217, filed August 2, 1982. Applicant: KAETS TRANSPORT, INC., 717 Vandalia St., St. Paul, MN 55114. Representative: Stanley C. Olsen, Jr., 5200 Willson Rd., Suite 307, Edina, MN 55424. *Food and related products,* between points in MN and Adams County, IL, on the one hand, and, on the other, points in the U.S. (except AK and HI). Supporting shippers: There are 6 shippers.

MC 163261 (Sub-4–1TA), filed August 2, 1982. *Applicant:* ROADMASTER, INC., 8575 Dixon Rd., Rives Junction, MI 49277. *Representative:* Jack L. Schiller, 123–60 83rd Ave., Kew Gardens, NY 11415. Contract, irregular: *air-conditioners and furnaces and related parts and accessories* between Addison, Jackson and Jonesville, MI, OTOH and, OTO points in AR, CA, FL, GA, IA, IL, IN, MA, MD, MN, MO, ND, NY, OH, OK, PA and TX under account with Heat Controller, Inc., of Jackson, MI. Supporting shipper: Heat Controller, Inc. P.O. Box 1089, Jackson, MI 49204.

The following applications were filed in Region 5. Send protests to Consumer Assistance Center, Interstate Commerce Commission, P.O. Box 17150, Fort Worth, TX 76102.

MC 135762 (Sub-5–11TA), filed August 2, 1982. Applicant: JOHN H. NEAL, INC., P.O. Box 3877, Fort Smith, AR 72913. Representative: Don A. Smith, P.O. Box 43, Fort Smith, AR 72902. *Contract;* Irregular: *General commodities (except Classes A and B explosives, commodities in bulk and household goods as defined by the Commission),* between points in the U.S. (except AK and HI) under a continuing contract with Samsonite Corporation, Fort Smith Table and Furniture Co. Division. Supporting shipper: Samsonite Corporation, Fort Smith Table and Furniture Co. Division.

MC 135762 (Sub-5–12TA), filed August 2, 1982. Applicant: JOHN H. NEAL, INC., P.O. Box 3877, Fort Smith, AR 72913. Representative: Don A. Smith, P.O. Box 43, Fort Smith, AR 72902. *Contract;* Irregular: General commodities (except Classes A and B explosives, commodities in bulk and household goods as defined by the Commission), between points in the U.S. (except AK and HI) under a continuing contract with Southwinds Sofas & Sleepers, Inc. Supporting shipper: Southwinds Sofas & Sleepers, Inc.

MC 144858 (Sub-5–16TA), filed August 2, 1982. Applicant: DENVER SOUTHWEST EXPRESS, INC., P.O. Box 9799, Little Rock, AR 72219. Representative: Scott E. Daniel (same as above). *Food and kindred products* (except in bulk) between points in AR, FL, GA, IL, IN, IA, KY, LA, MI, MN, MS, MO, NC, OH, SC, TN, TX, VA, WV, and WI. Supporting shipper: The Kroger Co., Cincinnati, OH.

MC 150711 (Sub-5–4TA), filed August 2, 1982. Applicant: R.G.B. TRANSPORTATION CO., INC., 1034 Humble, El Paso, Texas 79926. Representative: R. G. Brijalba (same as applicant). *Foodstuffs, including Meats, Meat By-Products and Packing House Products, in refrigerated equipment,* between El Paso County, TX and Los Angeles County, CA, on the one hand, and, on the other, points in the states of AL, AZ, CA, CO, FL, GA, ID, IL, IA, KS, KY, LA, MN, MO, MS, NE, NM, NC, ND, OH, OK, OR, SC, SD, TN, TX, UT, VA, WA, WV, WI, and WY. Supporting shippers: 14.

MC 151314 (Sub-5–3TA), filed August 3, 1982. Applicant: B & W EXPRESS, INC., P.O. Box 2122, San Antonio, TX 78205. Representative: Kenneth R. Hoffman, 1600 W. 38th Street, Suite 410, Austin, TX 78731. *General commodities (except classes A and B explosives, household goods, and commodities in bulk)* between points in Medina, Zavala, Maverick, Dimmit, Uvalde, Webb and El Paso Counties, TX on the one hand, and, on the other, points in Bexar, Harris and Galveston Counties, TX. Supporting shippers: Burch Traffic Service, San Antonio, TX.

MC 152068 (Sub-5-8TA), filed August 2, 1982. Applicant: HOC-EXPRESS, INC., 125 N. Elizabeth, Wichita, KS. 67203. Representative: Clyde N. Christey, KS Credit Union Bldg., 1010 Tyler, Suite 110L, Topeka, KS. 66612. *Drilling mud, soda ash and chemicals, used in drilling oil and gas wells,* From Greybull, Thermopolis, Lovell, Green River, Upton, Gillettee, Casper, Riverton, Evanston, WY; Salt Lake City and Roosevelt, UT; Belle Fourche, SD; McCook, NE and Missoula and Sidney, MT, on the one hand and points in AR, KS, NE, LA, OK and TX, on the other hand. Supporting shippers: Eagleston Wholesale Mud & Chemical, Inc., P.O. Box, 20648, Oklahoma City, OK 73156; Davis Mud & Chemical, Inc., P.O. Box 108, Gt. Bend, KS 67530.

MC 152971 (Sub-5-3TA), filed August 2, 1982. Applicant: DEEP SOUTH FREIGHT LINES, LTD., 6308 Boutall Street, Metairie, LA 70003. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103. *Lumber and wood products, posts, poles and pilings,* from Mobile County, AL; Grant, LaSalle, Livingston, Natchitoches, Washington and Winn Parishes, LA; Harrison, Lamar and Stone Counties, MS; and Sequoyah County, OK; to points in AL, AR, IL, IN, IA, KS, LA, MS, MO, NE, NJ, OH, OK and TX; under continuing contract(s) with Crown Zellerbach Corporation, Bogaulusa, LA. Supporting shipper: Crown-Zellerbach Corp., P.O. Box 1060, Bogalusa, LA 70427.

MC 159472 (Sub-5-1TA), filed August 3, 1982. Applicant: LANCE FREIGHT CORP., 423 S.E. 18th Street, Des Moines, IA 50317. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *Food products (except in bulk) and chemicals (except in bulk)* between Des Moines, IA and Chicago, IL on the one hand and, on the other, points in AZ, CA, CO, IL, IN, IA, KS, MA, MI, MD, MN, MO, NE, NJ, NY, OH, OK, PA, TN, TX, VA and WI. Supporting shippers: Des Moines Cold Storage Co., Inc., 800 New York Street, Des Moines, IA; Illinois Packing Company, Chicago, IL and Iowa Packing Co., S.E. 18th and Maury, Des Moines, IA.

MC 160875 (Sub-5-2TA), filed August 2, 1982. Applicant: WEST SIDE GRAIN AND SALVAGE, INC., 86 Main Avenue, Atkins, IA 52206. Representative: Richard P. Moore, P.O. Box 1943, Cedar Rapids, IA 52406. Contract; Irregular: (1) *soybean meal* from the facilities of Ralston Purina Company at or near Bloomington, IL to the facilities of Ralston Purina Company at or near Clinton and Davenport, IA and (2)

gluten feed from Decatur, IL to the facilities of Ralston Purina Company at or near Clinton and Davenport, IA. Supporting shipper: Ralston Purina Company, Checkerboard Square, St. Louis, MO 63164.

MC 162973 (Sub-5-1TA), filed August 3, 1982. Applicant: JERRY WALLACE, d.b.a. JERRY WALLACE TRANSPORT SERVICE, Rte. 3, Box 210, Conroe, TX 77303. Representative: Billy R. Reid, 1721 Carl Street, Fort Worth, TX 76103. *Christmas decorations, displays and merchandise, and materials, equipment and supplies used in the sale and distribution thereof,* between Harris, Dallas, Bexar and Tarrant Counties, TX and Los Angeles, San Francisco and San Diego Counties, CA. Supporting shipper: The Original Christmas Store, 8700 So. Gassner Street, Houston, TX 77024.

MC 163220 (Sub-5–1TA), filed August 2, 1982. Applicant: UTILITY COMPANY, INC., 310 SE 2nd, P.O. Box 25216, Oklahoma City, OK 73125. Representative: D. R. Beeler, P.O. Box 482, Franklin, TN 37064. *Pulp, paper and related products, rubber and plastic products, clay, concrete, glass or stone products, and food and related products, and materials, equipment and supplies used in the manufacture, sale, or distribution of the aforementioned* between Bernalillo County, NM, Bexar County, TX, and Oklahoma County, OK, on the one hand, and, on the other, points in AR, CO, KS, LA, MO, NM, OK, and TX. Supporting shipper: Cardinal Paper Company, 220 East Reno, Oklahoma City, OK 73125.

MC 163221 (Sub-5–1TA), filed August 2, 1982. Applicant: COOLIDGE GRAIN AND PRODUCE, INC., 3112 Stratford Street, Pearland, TX 77581. Representative: David H. Barker, 600 Maryland Avenue, S.W., Washington, D.C. 20024. *Chemicals, plastices, rubber, and related products; except class A and B explosives and commodities in bulk.* Between ponts in TX and LA on the one hand, and, on the other, points in CA, CO, FL, OR, UT, and WA. Supporting shippers: 9.

MC 121631 (Sub-5–2TA), filed August 5, 1982. Applicant: MARSHFIELD DRAYAGE COMPANY, P.O. Box 50, George Street, Marshfield, MO 65706. Representative: Richard S. Brownlee, III, 235 E. High Street, Suite 210, Jefferson City, MO 65102. *Returned and rejected shipments of automobile parts and accessories* between Seymour, Marshfield and Mansfield, MO, on the one hand, and, on the other, points in the U.S. Applicant intends to interline. Supporting shipper: Hutchens Industries, Inc., Springfiled, MO 65803.

MC 128087 (Sub-5–4TA), filed August 6, 1982. Applicant: JOHN N. JOHN III, INC., P.O. Box 921, Crowley, LA 70526. Representative: William M. John (same as above). *Liquid Amorphous Polypropylene* from Lake Charles, LA to Woodward, AL. Supporting shipper: Hercules, Inc., Lake Charles, LA.

MC 152172 (Sub-5–4TA), filed August 6, 1982. Applicant: DENNIS KEAR, d.b.a. DENNIS KEAR TRUCKING, P.O. Box 112, York, NE 68467. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Meat and meat products,* from the facilities of Nebraskaland Meats, Inc. at or near Norfolk, NE, to points in the U.S. (except AK and HI). Supporting shipper: Nebraskaland Meats, Inc., P.O. Box 222, Norfolk, NE 68701.

MC 157061 (Sub-5–10TA), filed August 4, 1982. Applicant: ATLAS CARRIERS, INC., P.O. Box 163, Searcy, AR 72143. Representative: R. Connor Wiggins, Jr., 100 N. Main Bldg., Suite 90, Memphis, TN 38103. *Parabolic disks and related materials and supplies* from facilities of Vidare Technology, Inc. at Conway, AR, on the one hand, and, on the other, points in the U.S. Supporting shipper: Vidare Technology, Inc., 10 Sturgis Rd., Conway, AR 72032.

MC 159513 (Sub-5–3TA), filed August 6, 1982. Applicant: LOK Trucking Company, P.O. Box 44B, Route 2, Frisco, TX 75034. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062. *Paper* between Appleton, WI; Chillicothe, OH; Escabana, MI; Harrisburg, PA; Kingsport, TN; Mobile, AL on the one hand, and, on the other, points in TX. Restricted to shipments originating at or destined to the facilities of Clampitt Paper Company. Supporting shipper: Clampitt Paper Company, 9207 Ambassador Row, Dallas, TX.

MC 163268 (Sub-5–1TA), filed August 4, 1982. Applicant: TEXAS CUSTOM BAKERS, INC., 627 Big Stone Gap Rd., Duncanville, TX 75137. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 70562. Contract: Irregular, *General Commodities (except class A and B explosives, commodities in bulk or household goods)* between points in the U.S. Restricted to shipments originating at or destined to the facilities of Heublein, Inc. Supporting shipper: Heublein, Inc., 4 Farm Springs Dr., Farmington, CT 06032.

MC 163269 (Sub-5–1TA), filed August 4, 1982. Applicant: TEXAS LOUISIANA CARTAGE, INC., 669 Good Aere, Pineville, LA 71360. Representative: Earl T. Templeton (same as above). *General Commodities (except HHG's, Class A & B explosives, and commodities in bulk in tank vehicles)* between Houston, TX, on the one hand, and, on the other, all points in LA. Supporting shipper(s): 8.

MC 163278 (Sub-5–1TA), filed August 5, 1982. Applicant: JOHN J. HEIDERSCHEIT d.b.a. AL'S GARAGE, 3270 Dodge Street, Dubuque, IA 52001. Representative: Carl E. Munson, 469 Fischer Building, P.O. Box 796, Dubuque, IA 52001. *(1) Disabled or repossessed motor vehicles;* and *(2) Replacement vehicles disabled motor vehicles,* between points in IL, IA and WI. Supporting shippers: 8.

The following applications were filed in Region 6. Send protests to Interstate Commerce Commission, Region 6 Motor Carrier Board, 211 Main St., Suite 501, San Francisco, CA 94105.

MC 163271 (Sub-6–1TA), filed August 4, 1982. Applicant: COLUMBIA TRUCKING, INC., 5415 35th Ave. S.W., Seattle, WA 98126. Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 239, Renton, WA 98055. *Food and related products; such commodities as are dealt in or used by manufacturers and distributors of animal pet care products* between Seattle, WA, commercial zone, on the one hand, and points in OR, WA and CA, on the other hand, for 270 days. Supporting shippers: Tyrrell's, Inc., 155 N. 35th, Seattle, WA 98103; Pacific Food Products, Inc. 4,200 Airport Way, Seattle, WA 98108.

MC 128685 (Sub-6–9TA), filed August 4, 1982. Applicant: DIXON BROS., INC., P.O.D. 8, Newcastle, WY 82701. Representative: Jerome Anderson, 100 Transwestern I, Billings, MT 59101. *Cement* between points in Boulder County, CO, on the one hand, and on the other, points in WY, for 270 days. An underlying ETA seeks 120 days authority. Supporting shipper: Falcon Concrete Company, 1120 Falcon Ave, Mills, WY 82644.

MC 148341 (Sub-6–6TA), filed August 4, 1982. Applicant: MASS TRANSIT, INC., 2450 Orange Ave., Signal Hill, CA 90806. Representative: Milton W. Flack, 8484 Wilshire Blvd., #840, Beverly Hills, CA 90211. *Contract Carrier,* Irregular routes: *general commodities* (except classes A and B explosives, household goods and commodities in bulk), from points in AL, GA, ID, IL, MS, MO, MT, NJ, NY, NC, SC, TN and WA, to points in AZ and CA, under continuing contract(s) with The Price Company of San Diego, CA, for 270 days. Supporting shipper: The Price Company, 2657 Ariane Dr., San Diego, CA 92117.

MC 162724 (Sub-6–1 TA), filed August 2, 1982. Applicant: MOUNTAIN OIL TRANSPORT, INC., P.O. Box 2216, Walla Walla, WA 99362.

Representative: George R. LaBissoniere, 15 S. Grady Way, Suite 239, Renton, WA 98055. *Food and related products* between points in CA, on the one hand, and points in WA, OR, ID and MT, on the other hand, for 270 days. Supporting shipper: D & K Frozen Food, Inc., 1164 Dell Ave., Walla Walla, WA 99362.

MC 162213 (Sub-6-2TA), filed August 4, 1982. Applicant: PACIFIC SHIPPERS SERVICE, 1217 South 7th St., Modesto, Calif. 95353. Representative: Truett Yarbrough (same as applicant). *Canned or preserved foodstuffs,* from facilities of or moving on bills of lading of the supporting shippers in WA, OR, WI and MN to CA for 270 days. An underlying ETA seeks 120 day authority. Supporting shippers: S & W Fine Foods, Inc., 1730 So. ElCamino Real, San Mateo, CA 94402; California Canners & Growers, 3100 Ferry Building, San Francisco, CA 94406.

MC 163280 (Sub-6-1TA), filed August 5, 1982. Applicant: JAMES G. WOODWARD, d.b.a. STAGE LINE TOURS, 1317 East Gurley St., Prescott, AZ 86301. Representative: Raymond W. Brown, 1030 Willow Creek Road, Prescott, AZ 86301. *Common;* regular; *Passengers and their baggage and express and newspapers in the same vehicle with passengers,* between Flagstaff, AZ, and Grand Canyon, AZ, serving all intermediate points: from Flagstaff over U.S. Highway 180 to junction unnumbered highway approximately 8 miles north of Moqui, AZ, thence over unnumbered highway to Grand Canyon and return over the same route, for 180 days. Supporting shipper(s): There are 17 supporting shippers. Their statements may be examined at the Regional Office listed.

MC 145435 (Sub-6-3TA), filed August 4, 1982. Applicant: WESTERN AG INDUSTRIES, INC., 2750 North Parkway Drive, Fresno, CA 93711. Representative: Miles L. Kavaller, 315 South Beverly Drive, Suite 315, Beverly Hills, CA 90212. *Contract carrier,* Irregular routes: *General commodities,* except household goods, and commodities in bulk, between points in CA on the one hand, and, on the other, points in the U.S., except AK and HI, under a continuing contract with Western Ag Truck Brokers, Inc., for 270 days. Supporting shipper: Western Ag Truck Brokers, Inc., 2750 North Parkway Dr., Fresno, CA 93776.

[FR Doc. 82-22274 Filed 8-13-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-209)]

Baltimore & Ohio Railroad Co. Exemption for Contract Tariff ICC-BO-C-0053

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: A provisional exemption is granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the above-noted contract tariff may become effective on one day's notice. This exemption may be revoked if protests are filed.

DATES: Protests are due on or before August 31, 1982.

ADDRESSES: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Tom Smerdon (202) 275-7277.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in this instance to carry out the transportation policy of 49 U.S.C. 10101(a) or to protect shippers from abuse of market power, moreover, the transaction is of limited scope. Therefore, we find that the exemption request meets the requirements of 49 U.S.C. 10505(a) and is granted subject to the following condition:

This grant neither shall be construed to mean that the Commission has approved the contract for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to determine its lawfulness.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Decided: August 9, 1982.

By the Commission, Division 1, Commissioners Sterrett, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82-22275 Filed 8-13-82; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387 (Sub-216)]

Burlington Northern Railroad Company Exemption for Contract Tariff ICC-BN-C-0107

AGENCY: Interstate Commerce Commission.

ACTION: Notice of provisional exemption.

SUMMARY: A provisional exemption is granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the above-noted contract tariff may become effective on one day's notice. This exemption may be revoked if protests are filed.

DATE: Protests are due on or before August 31, 1982.

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway (202) 275-7278.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in this instance to carry out the transportation policy of 49 U.S.C. 10101(a) or to protect shippers from abuse of market power, moreover, the transaction is of limited scope. Therefore, we find that the exemption request meets the requirements of 49 U.S.C. 10505(a) and is granted subject to the following condition:

This grant neither shall be construed to mean that the Commission has approved the contract for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to determine its lawfulness.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

Authority: (49 U.S.C. 10505)

Decided: August 9, 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. 82-22276 Filed 8-13-82; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29987]

Burlington Northern Railroad Company—Exemption—Abandonment in Fremont County, IA, and Otoe County, NE

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the requirement of prior approval under 49 U.S.C. 10903 *et seq.* the abandonment by the Burlington Northern Railroad Company of 4.60 miles of track between milepost 0.36 near Payne, IA, and milepost 4.96 near

Nebraska City, NE, subject to the standard labor protection and to a historic preservation condition.

DATES: This exemption will be effective on September 15, 1982. Petitions to stay the effectiveness of the decision must be filed by August 26, 1982, and petitions for reconsideration of the decision must be filed by September 7, 1982.

ADDRESSES: Send pleadings to:

(1) Section of Finance, Room 5349, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' Representative, Thomas A. Ehlinger, 176 East Fifth Street, St. Paul, MN 55101

Pleadings should refer to Finance Docket No. 29987.

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, 12th and Constitution Ave., NW., Washington, D.C. 20423; (202) 289–4357—DC metropolitan area; (800) 424–5403—Toll-free for outside the DC area.

Decided: August 9, 1982.

By the Commission, Chairman Taylor, Vice Chairman Gilliam, Commissioners Sterrett, Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–22277 Filed 8–13–82; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 29880]

Peoria and Pekin Union Railway Co.; Acquisition and Operation in Tazewell County, IL

Peoria and Pekin Union Railway Company, 101 Wesley Road, Creve Coeur, IL 61611, represented by Thomas M. Hayes, Esq., Westervelt, Johnson, Nicoll & Keller, 1400 First National Bank Building, Peoria, IL 61602, hereby gives notice that on the 27th day of July, 1982, it filed with the Interstate Commerce Commission at Washington, DC, a supplementary application pursuant to 49 U.S.C. 10901 for a decision approving and authorizing the acquisition and operation of a line of railroad previously owned and operated by Peoria Terminal Company, approximately 3.32 miles in length. The said rail line is entirely located in the City of Pekin, County of Tazewell, State of IL, approximately two and one-half blocks east of Main Street and running from a point perpendicular to Franklin Street south to another point perpendicular to Sherman Street.

Pursuant to 49 U.S.C. 10901, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, DC 20423, and the aforementioned counsels for applicant, within 35 days after the filing of the application.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–22278 Filed 8–13–82; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–55 (Sub-62)]

Seaboard Coast Line Railroad Company—Abandonment—in Pinellas County, FL; Findings

The Commission has issued a certificate authorizing the Seaboard Coast Line Railroad Company to abandon its 10.96 mile rail line between Clearwater, FL (milepost SY 875.64) and Jungle, FL (milepost SY 886.60) in Pinellas County, FL. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served concurrently on the applicant, with copies to Mr. Louis E. Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. Any offer previously made must be resubmitted within this 10 day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1121.38.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 82–22279 Filed 8–13–82; 8:45 am]

BILLING CODE 7035–01–M

NATIONAL SCIENCE FOUNDATION

Subcommittee for Ocean Sciences Research of the Advisory Committee for Ocean Sciences; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92–463, the National Science Foundation announces the following meeting:

Name: Subcommittee for Ocean Sciences Research

Date and time: September 1–3 and 8–11, 1982, 9:00 am to 6:00 pm each day

Place: Rooms 523, 628, 642, and 643, National Science Foundation 1800 G Street, NW., Washington, D.C.

Type of meeting: Closed

Contact person: Dr. Robert E. Wall, Head, Ocean Science Research Section, Room 611, National Science Foundation, Washington, D.C. 20550 Telephone (202) 357–7924

Purpose of meeting: To provide advice and recommendations concerning support for research in Oceanography

Agenda: To review and evaluate research proposals as part of the selection process for awards

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92–463. The Committee Management Officer was delegated the authority to make such determination by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

Committee Management Coordinator.

August 11, 1982.

[FR Doc. 82–22201 Filed 8–13–82; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses to Import Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an import license. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

A request for a hearing or a petition for leave to intervene may be filed on or before September 15, 1982. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary,

U.S. Nuclear Regulatory Commission and the Executive Secretary, Department of State, Washington, D.C. 20520.

The table below lists the new major import application.

Dated this 6th day of August, at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James V. Zimmerman,

Assistant Director, Export/Import and International Safeguards, Office of International Programs.

FEDERAL REGISTER (IMPORT)

Name of applicant, date of application, date received, application number	Material type	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
Edlow Int'l, Aug. 3, 1982, Aug. 4, 1982, ISNM82010.	3.5% enriched uranium	30,000	1,050	For ultimate use in Florida Power and Light's Turkey Point Nuclear Power Station.	From France.

[FR Doc. 82-22284 Filed 8-13-82; 8:45 am]

BILLING CODE 7590-01-M

Applications for Licenses to Import Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following applications for import licenses. A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

A request for a hearing or a petition for leave to intervene may be filed on or before September 15, 1982. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission and the Executive Secretary, Department of State, Washington, D.C. 20520.

The table below lists the new major import applications.

Dated this 10th day of August, 1982, at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

James V. Zimmerman,

Assistant Director, Export/Import and International Safeguards, Office of International Programs.

FEDERAL REGISTER (IMPORT)

Name of applicant, date of application, date received, application number	Material type	Material in kilograms		End-use	Country of designation
		Total element	Total isotope		
Transnuclear, Aug. 5, 1982; Aug. 5, 1982, ISNM 82011.	1.10% enriched uranium	31,000	341	To be used as feed material for UES-4101-DUE	From France.
Transnuclear, Aug. 5, 1982; Aug. 5, 1982, ISNM 82012.	1.0% enriched uranium	17,000	170	To be used as feed material for UES/EU/39	From France.

[FR Doc. 82-22285 Filed 8-13-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-335]

Florida Power & Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 52 to Facility Operating License No. DPR-67, issued to Florida Power & Light Company (the licensee), which revised Technical Specifications for operation of the St. Lucie Plant, Unit No. 1 (the facility), located in St. Lucie County, Florida. The amendment is effective as of the date of issuance.

This amendment modifies the time limit of Appendix A Technical Specification 4.7.6.1.1 from 10 days to 30 days within which the Beach Dune Survey results must be submitted to the Commission after completion of the survey.

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 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 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 April 9, 1982, (2) Amendment No. 52 to License No. DPR-67 and (3) the Commission's letter dated August 6, 1982. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Indian River Junior College Library, 3209 Virginia Avenue, Ft. Pierce, 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 6th day of August, 1982.

For the Nuclear Regulatory Commission.

Robert A. Clark,

Chief, Operating Reactors Branch No. 3, Division of Licensing.

[FR Doc. 82-22282 Filed 8-13-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-382-OL]

Louisiana Power and Light Co., (Waterford Steam Electric Station, Unit 3); Assignment of Atomic Safety and Licensing Appeal Board

Notice is hereby given that, in accordance with the authority conferred by 10 CFR 2.787(a), the Chairman of the

Atomic Safety and Licensing Appeal Panel has assigned the following panel members to serve as the Atomic Safety and Licensing Appeal Board for this operating license proceeding: Stephen F. Eilperin, Chairman, Christine N. Kohl, Dr. Reginald L. Gotchy.

Dated: August 10, 1982.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 82-22286 Filed 8-13-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-312]

Sacramento Municipal Utility District; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 38 to Facility Operating License No. DPR-54, issued to Sacramento Municipal Utility District, which revised Technical Specifications (TSs) for operation of the Rancho Seco Nuclear Generating Station (the Facility) located in Sacramento County, California. The amendment is effective as of its date of issuance.

The amendment temporarily changes the TS Section 1.2.8 definition of refueling interval from 18 months to 24 months for specified surveillance requirements. Upon startup from the next refueling outage, this temporary definition will expire. Additionally, this amendment changes TS Section 4.6.3 to permit diesel generator overhaul to be delayed until the next refueling outage.

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 hazard 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 licensee's application dated May 24, 1982, (2) Amendment No. 38 to License No. DPR-54, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Business and Municipal Department, Sacramento City-County Library, 828 I Street, Sacramento, California. 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 6th day of August 1982.

For the Nuclear Regulatory Commission.

Philip C. Wagner,

Acting Branch Chief, Operating Reactors Branch No. 4, Division of Licensing.

[FR Doc. 82-22283 Filed 8-13-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-460]

Washington Public Power Supply System (WPPSS Nuclear Project No. 1); Receipt of Application for Facility Operating License; Availability of Applicant's Environmental Report; Consideraton of Issuance of Facility Operating License; and Notice of Opportunity for Hearing

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has received an application for a facility operating license from Washington Public Power Supply System (the applicant) to possess, use, and operate WPPSS Nuclear Project No. 1, a pressurized water nuclear reactor (the facility), located on the applicant's site on the Department of Energy's Hanford Reservation in Benton County, Washington. The reactor is designed to operate at a steady state power level of 3800 megawatts thermal, with an equivalent net electrical output of approximately 1266 megawatts.

The applicant has also filed, pursuant to the National Environmental Policy Act of 1969 and the regulations of the Commission in 10 CFR Part 51, an environmental report which discusses environmental considerations related to the proposed operation of the facility. This report is being made available at the Office of the Governor, Planning and Community Affairs Agency, 400 Capitol Center Building, Olympia, Washington 98504 and at the Benton Franklin Governmental Conference, P.O. Box 217, Richland, Washington 99352.

After the environmental report has been analyzed by the Commission's staff, a draft environmental statement will be prepared. Upon preparation of the draft environmental statement, the Commission will, among other things, cause to be published in the **Federal Register**, a notice of availability of the draft statement, requesting comments from interested persons on the draft statement. The notice will also contain a statement to the effect that any comments of Federal agencies and State and local officials will be made available when received. The draft environmental statement will focus only on any matters which differ from those previously discussed in the final environmental statement prepared in connection with the issuance of the construction permits. Upon consideration of comments submitted with respect to the draft environmental statement, the Commission's staff will prepare a final environmental statement, the availability of which will be published in the **Federal Register.**

The Commission will consider the issuance of a facility operating license to Washington Public Power Supply System which would authorize the applicant to possess, use and operate the WPPSS Nuclear Project No. 1, in accordance with the provisions of the license and the technical specifications appended thereto, upon: (1) the completion of a favorable safety evaluation of the application by the Commission's staff; (2) the completion of the environmental review required by the Commission's regulations in 10 CFR Part 51; (3) the receipt of a report on the applicant's application for a facility operating license by the Advisory Committee on Reactor Safeguards; and (4) a finding by the Commission that the application for the facility license, as amended, complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR Chapter 1. Construction of the facility was authorized by Construction Permit No. CPPR-134 issued by the Commission on December 23, 1975.

Prior to issuance of an operating license, the Commission will inspect the facility to determine whether it has been constructed in accordance with the application, as amended, and the provisions of the construction permit. In addition, the license will not be issued until the Commission has made the findings reflecting its review of the application under the Act, which will be set forth in the proposed license, and has concluded that the issuance of the license will not be inimical to the common defense and security or to the health and safety of the public. Upon issuance of the license, the applicant will be required to execute an indemnity agreement as required by Section 170 of

the Act and 10 CFR Part 140 of the Commission's regulations.

By September 15, 1982, the applicant may file a request for a hearing with respect to issuance of the facility operating license and any person whose interest may be affected by this proceeding may file a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary of the Commission, or designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularitly the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend his petition, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by September 15, 1982. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Nicholas S. Reynolds, Esq., Debevoise and Liberman, Suite 700, 1200 Seventeenth Street, NW., Washington, D.C. 20036, attorney for the applicant. Any questions or requests for additional information regarding the content of this notice should be addressed to the Chief Hearing Counsel, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details pertinent to the matters under consideration, see the application for the facility operating license dated May 6, 1982, and the applicant's environmental report dated May 6, 1982, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352. As they become available, the following documents may be inspected at the above locations: (1) the safety evaluation report prepared by the Commission's staff; (2) the draft environmental statement; (3) the final environmental statement; (4) the report of the Advisory Committee on Reactor Safeguards on the application for facility operating license; (5) the proposed facility operating license; and (6) the technical specifications, which will be attached to the proposed facility operating license.

Copies of the proposed operating license and the ACRS report, when available, may be obtained by request to the Director, Division of Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Copies of the Commission's staff safety evaluation report and final environmental statement, when available, may be purchased at current rates, from the National Technical Information Service, Department of Commerce, 5258 Port Royal Road, Springfield, Virginia 22161.

Dated at Bethesda, Maryland, this 30th day of July 1982.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Chief, Licensing Branch No. 4, Division of Licensing.

[FR Doc. 82-22292 Filed 8-13-82; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-389A]

Florida Power & Light Co., et al.; Receipt of Additional Antitrust Information; Time for Submission of Views on Antitrust Matters

Florida Power & Light Company, pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, has filed information requested by the Attorney General for antitrust review as required by 10 CFR Part 50, Appendix L. This information concerns a proposed additional ownership participant, the Florida Municipal Power Agency in the St. Lucie Plant, Unit 2. Florida Power & Light Company and the Orlando Utilities Commission of the City of Orlando are the current permit holders. The change involves the transfer of ownership from the Florida Power & Light Company to Florida Municipal Power Agency.

The information was filed in connection with the application submitted by the construction permit holders for an operating license for a pressurized water reactor. Construction was authorized on May 2, 1977, at the St. Lucie 2 site located on Hutchinson Island in St. Lucie County, Florida.

The original application was docketed on September 4, 1973, and the Notice of Receipt of Application for Construction Permits and Facility Licenses and Availability of Applicants' Environmental Report; Time for Submission of Views on Antitrust Matters was published in the **Federal Register** on September 21, 1973 (38 FR 27106). The Notice of Receipt of Application for Facility Operating Licenses; Notice of Availability of Applicant's Environmental Report; and the Notice of Consideration of Issuance of Facility Operating License and Notice of Opportunity for Hearing was published in the **Federal Register** on March 9, 1981 (46 FR 15831).

A copy of the above documents are available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street,

NW., Washington, D.C. 20555 and at the Indian River Community College Library, 3900 Virginia Avenue, Ft. Pierce, Florida 33450.

Any person who wishes to have his views on the antitrust matters with respect to the Florida Municipal Power Agency presented to the Attorney General for consideration or who desires additional information regarding the matters covered by this notice, should submit such views or requests for additional information to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Antitrust and Economic Analysis Branch, Division of Engineering, Office of Nuclear Reactor Regulation, on or before October 15, 1982.

Dated at Bethesda, Maryland, this 2nd day of August 1982.

For the Nuclear Regulatory Commission.

Frank J. Miraglia,

Chief, Licensing Branch No. 3, Division of Licensing.

[FR Doc. 82-22290 Filed 8-13-82; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council Panel on Future Military Technologies; Meeting

Notice is hereby given that the panel named above will meet at 8:30 a.m. on August 24, 1982 in the Pentagon, Room 5B725, Washington, D.C.

The panel will discuss Directed Energy.

The meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(1): All material under discussion is classified defense information. Authority for closing: Director, Office of Science and Technology Policy.

Contact: Dr. Alf L. Andreassen, Office of Science and Technology Policy, 726 Jackson Place NW., Washington, D.C. 20500. Phone: (202) 395-5684.

Dated: August 11, 1982.

Jerry Jennings,

Executive Director, Office of Science and Technology Policy.

[FR Doc. 82-22248 Filed 8-11-82; 3:36 pm]

BILLING CODE 3170-01-OSTP

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Executive Committee Meeting Cancellation

AGENCY HOLDING THE MEETING: Pacific Northwest Power and Conservation Planning Council (Northwest Power Planning Council).

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENTS: 47 FR 32228.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Tuesday, August 17, 1982; 1:00 p.m..

CHANGES IN THE MEETING: Cancelled.

Edward Sheets,

Executive Director.

[FR Doc. 82-22199 Filed 8-13-82; 8:45 am]

BILLING CODE 0000-00-M

SMALL BUSINESS ADMINISTRATION

Region IX Advisory Council; Public Meeting

The Small Business Administration, Region IX Advisory Council, located in the geographical area of Los Angeles, California, will hold a public meeting on Tuesday, August 31, 1982, at 11:30 a.m. at Taix-Les Freres Restaurant, 1911 Sunset Boulevard, Los Angeles, California, to discuss such business as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Gerold Morita, District Director, U.S. Small Business Administration, 350 South Figueroa, Los Angeles, California 90071 (213) 798-2977.

Dated: August 13, 1982.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

[FR Doc. 82-22489 Filed 8-13-82; 10:50 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 82-079]

Ship Structure Committee; Reestablishment

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: USCG announces the reestablishment of the Ship Structure Committee.

The purpose of the Committee is to conduct an aggressive research program which will, in the light of changing technology in marine transportation, improve the design, materials, and construction of the hull structure of ships and marine platforms by an extension of knowledge in these fields for the ultimate purpose of increasing the safe and efficient operation of all marine structures.

FOR FURTHER INFORMATION CONTACT: LCDR D. Anderson, USCG, Secretary, Ship Structure Committee, U.S. Coast Guard (G-MTH-4) Washington, D.C. 20593; (202) 426-2205 or 426-2197.

Dated: August 9, 1982.

H. W. Parker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public, and Consumer Affairs.

[FR Doc. 82-22245 Filed 8-13-82; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

[Docket No. 82-ASW-3AC]

Bell Model 222B Helicopter, Certification and Availability of Documents

The formal type certification process of the Bell Helicopter Textron Model 222B has been completed. Helcopter Type Certificate No. H9SW has been amended to include the Model 222B.

The Director of the FAA Southwest Region has conducted a review of the issues involved in the Model 222B type certification program and the findings of the FAA certification team. He has also reviewed and discussed with his staff a document entitled "Decision Basis for Type Certification of the Bell Model 222B Helicopter." Based on this review, the Director approved the amendment of Type Certificate No. H9SW to include the Model 222B.

A copy of the "Decision Basis for Type Certification of the Bell Model 222B Helicopter" is on file in the FAA Rules Docket. The "Decision Basis" reviews the purpose, structure, conduct, and significant highlights of the certification program wherein the manufacturer demonstrated compliance with the certification basis for the Model 222B.

The document is available for examination and copying at the Rules Docket, Room 916, 800 Independence Avenue, SW., Washington, D.C. Copies of the document may be obtained from the Office of the Director, Southwest Region, P.O. Box 1689, Fort Worth, Texas 76101, at a cost of $1.50.

Issued in Fort Worth, Texas, July 20, 1982.

C. R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 82-21959 Filed 8-13-82; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Coos County, Oregon

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed bridge replacement in Coos County, Oregon.

FOR FURTHER INFORMATION CONTACT: Richard Arnold, Environmental Coordinator, Federal Highway Administration, Equitable Center, Suite 100, 530 Center NE, Salem, Oregon 97310, Telephone: (503) 378–3835.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oregon Department of Transportation, will prepard an environmental impact statement (EIS) on a proposal to replace the South Slough Bridge on the Cape Arago Highway (State Route No. 240) in Coos County, Oregon. The project is located in the small community of Charleston and crosses South Slough, and arm of the Coos Bay Estuary. The proposed project is considered necessary to replace a deteriorating bridge of inadequate width.

Alternatives under consideration include: (1) Taking no action; (2) replacing the existing swing span structure with a new structure with a double bascule draw span; (3) replacing the existing structure with a fixed span of sufficient height to provide adequate clearance; and (4) other feasible alternatives that may develop during the project study stage.

Information describing the proposed action will be sent to the appropriate Federal, State, and local agencies and to private organizations and citizens who have previously expressed interest in this proposal. As necessary, public meetings will be held and, in addition, a public hearing will be held. No formal scoping meeting is planned at this time.

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 on: August 3, 1982.

E. J. Valach,

Program Development Engineer, Oregon Division, Salem, Oregon.

[FR Doc. 82–22048 Filed 8–13–82; 8:45 am]

BILLING CODE 4910–22–M

Intent To File a Supplemental Environmental Impact Statement; Larimer County, Colo.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this Notice of Intent to advise the public that a Supplemental Environmental Impact Statement will be prepared for a proposed highway project in Larimer County, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. A. J. Siccardi, Division Administrator, Colorado Division, 555 Zang Street, P.O. Box 25406, Denver, Colorado 80225 Attention: Mr. John W. Gibbs (303) 234–4438.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Colorado State Highway Commission will prepare a Supplemental Environmental Statement (SEIS) for Colorado Highway Project FC 287–3(22), Fort Collins Expressway east of College Avenue. The original environmental impact statement for the expressway (FWHA–COLO–EIS–72–06–F) was approved in 1977.

The Fort Collins Expressway project will use Federal-aid Primary and Colorado State Highway funds to provide a divided, 4-lane, limited-access highway. The highway is intended to convey high volumes of traffic presently using State Highway (SH) 14 and US 287 Routes through La Porte and northern Fort Collins.

The location and preliminary design of a portion of the proposed facility located west of College Avenue and extending northwesterly past the town of LaPorte have been approved. However, substantial changes in the local street system and other developments have reduced the suitability of the approved route location east of College Avenue.

The portion of the expressway east of College Avenue is now to be restudied to determine if a new route location would be appropriate. This portion of the expressway is intended to reduce congestion on the following streets which are part of the State/Federal-aid highway system:

A. North College Avenue (US 287) from the proposed expressway location, south to Jefferson Street (SH 14) at the northern edge of the Central Business District.

B. Jefferson Street and Riverside Avenue (both SH 14) between College Avenue and Mulberry Street.

C. Mulberry Street (SH 14) east Riverside Avenue.

Besides these highway routes, the expressway is expected to relieve traffic congestion on many other arterial streets being used by regionally based traffic to avoid the conjested State Highway routes.

The length of project alternatives will range from approximately 2½ to 4 miles. Alternatives will include routes to take the expressway from north College Avenue to a connection with either State Highway 14 east of the city or with I 25. Various corridors to provide these connections, as well as the no build alternative will be evaluated in environmental studies leading to a SEIS.

This notification is being sent directly to agencies of Federal, State and local governments which may have an interest in this project.

An initial scoping meeting will be scheduled during the fall of 1982 in Fort Collins, Colorado.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Agencies, organizations and individuals interested in submitting comments and/or questions should direct them to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program No. 20.205, (Highway Research, Planning and Construction); the provisions of OMB Circular A–95 regarding State and local clearinghouse review of Federal and Federally-assisted programs and projects apply to this program)

Issued: August 2, 1982.

A. J. Siccardi,

Division Administrator, Denver, Colorado.

[FR Doc. 82–22218 Filed 8–13–82; 8:45 am]

BILLING CODE 4910–22–M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 158
Monday, August 16, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94–409) 5 U.S.C. 552b(e)(3).

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Consumer Product Safety Commission	1
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Federal Mine Safety and Health Review Commission	5

1

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10 a.m., Thursday, August 19, 1982.

LOCATION: Room 456, Westwood Towers Buildings, Bethesda, Maryland.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Wood Products with Urea-Formaldehyde Resins*
The staff will brief the Commission on the status of the project concerning pressed wood products manufactured with urea-formaldehyde resins.
2. *Prednisone: Final Exemption*
The staff will brief the Commission on a draft final regulation to exempt certain prednisone drugs from the child-resistant packaging requirements of the Poison Prevention Packaging Act.

Closed to the Public

3. *Selection of TAB Members*
The Commission will consider the selection of members to the Toxicological Advisory Board.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Deputy Secretary, Office of the Secretary, Suite 342, 5401 Westbard Avenue, Bethesda, MD 20207; Telephone (301) 492–6800.

[S–1175–82 Filed 8–12–82; 2:51 pm]

BILLING CODE 6355–01–M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., Tuesday, August 17, 1982.

PLACE: 2033 K Street, N.W., Washington, D.C., fifth floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Fiscal Year 1984 Budget.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S–1172–82 Filed 8–12–82; 9:10 am]

BILLING CODE 6351–01–M

3

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47 FR 34876, Wednesday, August 11, 1982.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Monday, August 16, 1982.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Reimbursement of Federal Reserve System employee expenses.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452–3204.

Dated: August 11, 1982.

James McAfee,

Associate Secretary of the Board.

[S–1174–82 Filed 8–12–82; 11:04 am]

BILLING CODE 6210–01–M

4

INTERNATIONAL TRADE COMMISSION

[USITC SE–82–31]

TIME AND DATE: 10 a.m., Wednesday, August 25, 1982.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: .

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Investigation 701–TA–184 (Preliminary) (Frozen Concentrate Orange Juice from Brazil)—briefing and vote.
6. Any item left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

[S–1173–82 Filed 8–12–82; 10:18 am]

BILLING CODE 7020–02–M

5

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 11, 1982.

TIME AND DATE: 10 a.m., Wednesday, August 18, 1982.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider an act upon the following:

1. Western Steel Corporation, Docket No. WEST 81–132–RM. (Issues include whether the judge erred in vacating a citation issued under 30 CFR 57.4–33, which deals with safe handling of oxygen and acetylene tanks.)

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5632.

[S–1176–82 Filed 8–21–82; 3:53 pm]

BILLING CODE 6735–01–M

federal register

Monday
August 16, 1982

Part II

Department of Defense

Department of the Army

Freedom of Information

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Parts 518 and 519

Release of Information and Records From Army Files

AGENCY: Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Army has revised its regulation for administering the Freedom of Information Act by incorporating the Department of Defense regulation 5400.7–R, "DoD Freedom of Information Act Program," December 1980. This revision ensures that Army policy for responding to Freedom of Information Act request is consistent with published Department of Defense policy.

EFFECTIVE DATE: August 16, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Walker, (202) 325–6163, HQDA(DAAG–AMR–S), Alexandria, VA 22331.

SUPPLEMENTARY INFORMATION: The Department of the Army has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

List of Subjects in 32 CFR Part 518

Administrative practice and procedures, Archives and records, Classified information, Freedom of information, Health records, Privacy.

PART 519—PUBLICATION OF RULES AFFECTING THE PUBLIC

§§ 518.51–518.69 (Subpart B)—[Redesignated as Part 519]

Accordingly, 32 CFR Part 518 is revised. Former Subpart B is redesignated without change as new Part 519, entitled "Part 519—Publication of Rules Affecting the Public." Revised Part 518 reads as set forth below:

(5 U.S.C. 552)

Dated: April 9, 1982.

John O. Roach II,

Army Liaison Officer with the Federal Register.

PART 518—RELEASE OF INFORMATION AND RECORDS FROM ARMY FILES

Subpart A—General Provisions

Sec.

518.1 Purpose and applicability.
518.2 DOD public information.
518.3 Definitions.
518.4 Policy.

Subpart B—FOIA Reading Rooms

518.5 Requirements.
518.6 Indexes.

Subpart C—Exemptions

518.7 General provisions.
518.8 Exemptions.

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518.9 General provisions.
518.10 Markings.
518.11 Dissemination and transmission.
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518.13 Termination, disposal and unauthorized disclosures.

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518.14 General provisions.
518.15 Initial determinations.
518.16 Appeals.
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Subpart F—Fee Schedule

518.18 General provisions.
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Subpart G—Reports

518.20 Reports control.
518.21 Annual report.
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Subpart H—Education and Training

518.23 Responsibility and purpose.

Appendix A—Unified Commands—Processing Procedures for FOI Appeals
Appendix B—Addressing FOIA Requests
Appendix C—Litigation Status Sheet
Appendix D—Annual Report Format
Appendix E—Other Reason Categories
Appendix F—DD Form 2086, "Record of Freedom of Information (FOI) Processing Cost
Appendix G—Instructions for Triannual Report

Authority: 5 U.S.C. 552.

Subpart A—General Provisions

§ 518.1 Purpose and applicability.

(a) *Purpose.* The purpose of this Army Regulation (AR) is to provide policies and procedures for the implementation of the Department of Defense (DoD) Freedom of Information Act Program (§ 518.1 above) in the Army. This Regulation incorporates and amplifies Department of Defense (DoD) Regulation 5400.7–R.

(b) *Applicability.* This AR applies to—

(1) Active Army;

(2) Army National Guard;

(3) US Army Reserve;

(4) Organizations for which Department of Army (DA) is the Executive Agent.

(c) *Scope.* (1) This Army Regulation (AR) governs written requests that invoke the Freedom of Information Act from sources outside the Department of Army (DA). It does not preclude release of records to agencies or individuals in the federal government for official work or duties. Section 518.14(b) gives procedures for release of personnel information to government agencies outside DoD.

(2) Service members and civilian employees of the DA may, as private citizens, request DA or other agencies' records under the FOIA. They must prepare requests at their own expense and not during duty or working hours. They may not use government equipment or supplies to prepare personal FOIA requests.

(3) Requests for DA records will be denied only on the grounds authorized in this AR, the Defense Acquisition Regulation (DAR), and the Federal Personnel Manual (FPM); limits in other ARs do not automatically apply to FOIA requests. Information about drug or alcohol use of personnel is not covered under this AR; see AR 600–85.

(4) Release of some records may also be affected by the programs which created them. They are discussed in the following regulations:

(i) Inspector General reports—AR 20–1.

(ii) Claims reports—AR 27–20.

(iii) Patents, inventions, and copyrights—AR 27–60.

(iv) U.S. Accounting Office audits—AR 36–20.

(v) Litigation: release of information and appearance of witnesses—AR 27–40.

(vi) Medical records—AR 40–2 and AR 40–400.

(vii) Technical reports—AR 70–31.

(viii) Aircraft accident investigations—AR 95–1, AR 95–5, and AR 20–1.

(ix) Criminal investigation activities—AR 195–2.

(x) Military police files—AR 190–45.

(xi) Army Public Affairs: Public information, general policies on release of information to the public—AR 360–5.

(xii) Foreign nationals, release of information—AR 380–10.

(xiii) U.S. Army Intelligence and Security Command investigation files—AR 381–45.

(xiv) Safety reports and records—AR 385–40.

(xv) Alcohol and drug abuse records—AR 600–85.

(xvi) Military personnel records—AR 640–10.

(xvii) Civilian personnel records—CPRs 296–31, 700, and 752–1; FPM chapters 293, 294, and 339; and AR 230–2.

(xviii) National Security classified information—DOD 5200.1–R and AR 380–5.

(xix) Procurement matters—Defense Acquisition Regulation (DAR) and the Army Defense Acquisition Regulation Supplement (ADAR).

(xx) Policies and procedures for allowing persons outside the Executive Branch to do unofficial historical research in classified Army records—paragraph 7–105e, AR 380–5.

§ 518.2 Department of Defense (DOD) public information.

(a) *Public information.* The public has a right to information concerning the activities of its government. DoD policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A DoD record requested by a member of the public who follows rules established by proper authority in the Department of Defense shall be withheld only when it is exempt from mandatory public disclosure under the FOIA. In the event a requested record is exempt under the FOIA, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by the release of the record. In order that the public may have timely information concerning DoD activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information should continue to be honored through appropriate means even though the request does not qualify under FOIA requirements.

(b) *Control System.* (1) A request for records that invokes the Freedom of Information Act (FOIA) shall enter a formal control system designed to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified in this Regulation. Any request for Department of Defense (DoD) records that either explicitly or implicity cites the FOIA shall be processed under the provisions of this Regulation or under the Privacy Act, when the request is from the subject of the records requested. In this case, the records requested must be in a system of records, and be retrieved by reference to the requester's name or other personal identifier.

(2) A Privacy Act request for access to records should also be processed as an FOIA request. If any part of the requested material is to be denied, it must be considered under the substantive provisions of both the Privacy Act and the Freedom of Information Act. Any withholding of information must be justified under an exemption in each Act.

§ 518.3 Definitions.

As used in this Regulation, the following terms and meanings shall be applicable.

(a) *FOIA request.* A written request for Department of Defense (DoD) records, made by a member of the public, that either explicitly or implicitly invokes the FOIA, DoD Directive 5400.7, this Regulation, or DoD Component supplementing regulations or instructions. This AR is DA's supplementing regulation.

(b) *Agency records.* (1) The products of data compilation, regardless of physical form or characteristics, made or received by a DoD Component in connection with the transaction of public business and preserved by a DoD Component primarily as evidence of the organization, policies, functions, decisions, or procedures of the DoD Component.

(2) The following are not included within the definition of the word "record":

(i) Library and museum material made, acquired, and preserved solely for reference or exhibition.

(ii) Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles and equipment, whatever their historical value, or value as evidence.

(iii) Commercially exploitable resources, including but not limited to, formulae, designs, drawings, maps and charts, map compilation manuscripts and map research materials, research data, computer programs, and technical data packages that were not created and are not utilized as primary sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component.

(iv) Unaltered publications and processed documents, such as regulations, manuals, maps, charts and related geophysical materials, that are available to the public through an established distribution system with or without charges.

(v) Anything that is not a tangible or documentary record, such as, an individual's memory or oral communication.

(vi) Personal notes of an individual not made available to other persons in an agency and not filed with agency records.

(vii) Information stored within a computer for which there is no existing computer program or printout.

(3) A record must exist and be in the possession and control of the Department of Defense at the time of the request to be considered subject to this Regulation. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request.

(c) *DoD component.* An element of the Department of Defense, authorized to receive and act independently on FOIA requests. A DoD Component has its own initial denial authority (IDA) or authorities and its own appellate authority. DA is a DoD Component.

(d) *Initial denial authority.* An official who has been granted authority by the head of a DoD Component to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosures.

(e) *Appellate authority.* The head of the DoD Component or the Component head's designee having jurisdiction for this purpose over the record. DA's appellate authority is the Office of General Counsel.

(f) *Administrative appeal.* A request by a member of the general public, made under the FOIA, asking the appellate authority of a DoD Component to reverse an IDA decision to withhold all or part of a request record or to deny a request for waiver or reduction of fees.

(g) *Segregable portions.* Any reasonable part of a record remaining after information that is exempt from disclosure under the FOIA is deleted.

(h) *Law Enforcement Investigation.* Investigations made by commands or agencies with law enforcement responsibilities relating to crime, waste, or fraud and for national security reasons. These investigations may include gathering evidence for criminal prosecutions and for civil or regulatory proceedings.

§ 518.4 Policy.

(a) *Compliance with the Freedom of Information Act.* DoD personnel are expected to comply with the provisions of the FOIA and this Regulation in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.

(b) *Openness with the public.* The Department of Defense shall conduct its activities in an open manner consistent

with the need for security and adherence to other requirements of law and regulation. Records not specifically exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

(1) *Operations Security (OPSEC).* DA officials who release records under the FOIA must also consider OPSEC. The Army implementing directive is AR 530–1.

Section 518.14 gives the procedure for FOIA personnel and the IDA to follow when an FOIA request appears to involve OPSEC.

(2) DA Form 4948–R (Freedom of Information Act (FOIA)/Operations Security (OPSEC) Desk Top Guide). This form lists references and information frequently used for FOIA requests related to OPSEC. The name and telephone number of the command FOIA/OPSEC advisor will be entered on the form. Persons who routinely deal with the public (by telephone or letter) on such requests should keep the form on their desks as a guide.

Note.—DA Form 4948–R will be locally reproduced; See figure 1–1.

(c) *Avoidance of procedural obstacles.* DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this Regulation and any supplemental regulations published by the DoD Components.

(d) *Prompt action on requests.* When a member of the public complies with the procedures established in this Regulation for obtaining DoD records, the request shall receive prompt attention; a reply shall be dispatched within 10 working days, unless a delay is authorized. Requests by individuals for access to records about themselves shall be processed under the Privacy Act procedures, as implemented by DoDD 5400.11, outlined in this Regulation, provided such records are contained in a system of records and are retrievable by reference to the requester's name or other personal identifier. Even though a request that invokes the FOIA is administratively processed under Privacy Act procedures, no record shall be withheld that would be released under FOIA procedures.

(1) The 10-day period prescribed for review of initial requests under the FOIA (5 U.S.C. 552(a)(6)) starts only when the request—

(i) Is in writing;

(ii) Reasonably describes the record requested;

(iii) Does not fall in a category in § 518.4(j) with regard to fees; and

(iv) Is received by the proper official as designated in this AR (app B).

(2) All requests should refer explicitly or implicitly to the Freedom of Information Act. This will ensure a prompt response in recognizing the request as an FOIA action. Both the letter of request and the envelope in which it is sent should be clearly marked "Freedom of Information Act Request."

(3) Members of the public who make FOIA requests should follow the guidance in this AR carefully. They should send requests to the office that has the desired record or to a specific agency FOIA official for referral. If the person does not know to whom to send a request, he or she may contact HQDA(DAAG–AMR–S), Alexandria, VA 22331, for the information.

(4) See AR 340–21 for Privacy Act procedures.

(e) *Use of exemptions.* (1) Records that may be withheld under the exemptions outlined in Subpart C of this Regulation shall be made available to the public when it is determined that no governmental interest will be jeopardized by their release. Determination of jeopardy to governmental interest is within the sole discretion of the Component, consistent with statutory requirements or other requirements of law.

(2) Parts of a requested record may be exempt from disclosure under the FOIA. The proper DA official may delete exempt information and release the rest of the record to the person requesting it. If the nonexempt part of the record is unusable or does not contain a reasonable amount of information responding to the request, he or she need not release it. The proper official also has the discretion to (under the FOIA) release exempt information; he or she must exercise this discretion in a reasonable manner, within regulations.

(f) *Public domain.* Nonexempt records released under the authority of this Regulation are considered to be in the public domain. Exempt records released pursuant to this Regulation or other statutory or regulatory authority however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional Committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this Regulation apply if the same individual seeks the records in a private or personal capacity.

(g) *Creating a record.* A record must exist and be in the possession and control of the Department of Defense at the time of the request to be considered subject to this Regulation. Mere possession of a record does not presume departmental control and such records, or identifiable portions thereof, would be referred to the originating Agency for direct response to the requester. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request. A DoD Component, however, may compile or create a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is less than the fee which would be charged for providing the existing record. Fee assessment for direct search and duplication associated with the request shall be in accordance with § 518.18b. Information requested may be in records at several locations. The proper official will refer the requester to those sources directly if—

(1) The information must be released under the FOIA; and

(2) Assembling the information would interfere materially with DA operations at the site first receiving the request.

(h) *Description of requested record.* (1) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record that enables the Government to locate the record with a reasonable amount of effort. The Act does not authorize "fishing expeditions." When a DoD Component receives a request that does not "reasonably describe" the requested record, it shall notify the requester of the defect. When practicable, Components shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act. DA FOIA officials will reply to unclear requests by letter. The letter will—

(i) Describe the defects in the request.

(ii) Explain the types of information in § 518.4(h)(2) below, and ask the requester for such information.

(iii) Tell the requester no action will be taken on the request until he or she responds to the letter.

(2) The following guidelines are provided to deal with "fishing expedition" requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(i) Category I is file-related and includes information such as type of record—memorandum, title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(3) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, non-random search based on the Component's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

(4) The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers only are provided in connection with a request for records concerning the requester, only records retrievable by personal identifiers need be searched. Search for such records may be conducted under Privacy Act procedures. No record may be denied that is releasable under the FOIA.

(5) The above guidelines notwithstanding, the decision of the DoD Component concerning reasonableness of description must be based on knowledge of its files. If the description enables DoD Component personnel to locate the record with reasonable effort, the description is adequate.

(i) *Referrals.* (1) A request received by a DoD Component having no records responsive to a request shall be referred routinely to another DoD Component, if the other Component confirms that it has the requested record, and this belief can be confirmed by the other DoD Component. If the DoD Component that is consulted determines that the existence or nonexistence of any record of the DoD Component reponsive to the request is in itself classified, the requester will be so notified. Otherwise, the request shall be referred to the other DoD Component, and the requester shall be notified of any such referral. Any DoD Component receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester.

(2) Whenever a record, or a portion of a record, is, after prior consultation, referred to another DoD Component or to a government agency outside of the Department of Defense for a release determination and direct response, the requester shall be informed of the referral. Referred records shall only be identified to the extent consistent with security requirements.

(3) A DoD Component shall refer an FOIA request for a classified record that it holds to another DoD Component or agency outside the DoD, if the record originated in the other DoD Component or outside agency or if the classification is derivative. Telephonic coordination with the DoD Component or outside agency shall be made prior to the referral.

(4) A DoD Component may also refer a request for a record that it originated to another DoD Component or agency when the record was created for the use of the other DoD Component or agency. The DoD Component or agency for which the record was created may have an equally valid interest in withholding the record as the DoD Component that created the record.

An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor should be at the discretion of the contracting officer. Any FOIA request shall be referred to the appropriate contracting officer and the requester shall be notified of the referral.

(5) Within DoD, a Component shall ordinarily refer an FOIA request for a record that it holds, but that was originated by another DoD Component or that contains substantial information obtained from another DoD Component, to that Component for direct response, after direct coordination and obtaining concurrence from the Component. Then, the requester shall be notified of such referral. DoD Components shall not, in any case, release or deny such records without prior consultation with the other DoD Component.

(6) DoD Components that receive referred requests shall answer them in accordance with the time limits established by the FOIA and this Regulation. Those time limits shall begin to run upon receipt of the referral by the official designated to respond.

(7) Agencies outside the Department of Defense that are subject to the FOIA.

(i) A Component may refer an FOIA request for any record that originated in an agency outside the Department of Defense or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise the Component must respond to the request.

(ii) A DoD Component shall not honor any FOIA request for investigative, intelligence, or any type of records that are on loan to the Department of Defense for a specific purpose, if the records are restricted from further release and so marked. Such requests shall be referred to the agency that provided the record.

(iii) Notwithstanding anything to the contrary in Section 1–508, a Component shall forward a request for NSC documents or White House files to the National Security Council for a direct response to the requester. DoD documents in which the NSC has a concurrent reviewing interest shall be forwarded to DFOISR, OASD (Public Affairs) which shall effect this coordination with the NSC, and return the documents to the originating agency after the NSC review and determination.

(8) To the extent referrals are consistent with the policies expressed by this paragraph, referrals between offices of the same DoD Component are authorized.

(j) *Fee assessment.* (1) Fees may not be used to discourage requests, and to this end FOI fees are limited to standard charges for direct document search and duplication. Documents may be furnished without charge or at a reduced charge when the agency determines that waiver or reduction of the fees is in the public interest because furnishing the information can be considered as primarily benefiting the general public. Based on this guidance, the Department of Defense has established a liberal fee schedule, that is outlined in Subpart F.

(2) In order to be as responsive as possible to FOIA requests, while minimizing unwarranted costs to the taxpayer, DoD Components shall adhere to the following procedures:

(i) If the requester declares an unwillingness to pay fees and does not substantiate a request for waiver and if it appears that the direct search and reproduction costs associated with the request shall exceed the automatic waiver threshold, the request need not be processed and the requester shall be so informed.

(ii) If the requester declares a willingness to pay fees up to a specified amount and does not substantiate a request for waiver, then the specified amount or the automatic waiver threshold, whichever is greater, shall not

be exceeded without the consent of the requester.

(iii) If the requester makes no declaration concerning fees and does not substantiate a request for waiver, and if it appears that the direct search and reproduction fees to be assessed shall exceed the automatic waiver threshold, the request shall not be processed until the requester is advised of anticipated charges and agrees to pay them.

(iv) Components may require payment of all or a portion of estimated fees before processing a request.

(v) Subsequent requests from persons who fail to discharge fee obligations need not be processed until previous obligations have been discharged or waived.

(k) *Authentication.* Records provided under this Regulation shall be authenticated with an appropriate seal whenever necessary to fulfill an official Government or other legal function. This service, however, is in addition to that required under FOIA and is not included in the FOIA fee schedule. DoD Components may charge for the service at a rate of $3.00 for each authentication.

(l) *Unified and specified commands.* (1) The Unified Commands are placed under the jurisdiction of the OSD, instead of the administering Military Department, only for the purpose of administering the DoD FOIA Program. This policy represents an exception to the policies directed in DoD Directive 5100.3; it authorizes and requires the Unified Commands to process FOI requests in accordance with DoD Directive 5400.7 and this regulation. The Unified Commands shall forward directly to the Office of the Assistant Secretary of Defense (Public Affairs), OASD(PA), all correspondence associated with the appeal of an initial denial for records under the provisions of the FOIA. Procedures to effect this administrative requirement are outlined in Appendix A.

(2) The Specified Commands remain under the jurisdiction of the administering Military Department. The Commands shall designate IDAs within their headquarters; however, the appellate authority shall reside with the Military Department.

(m) *Records management.* FOIA records shall be maintained and disposed of in accordance with DoD Component disposition instructions and schedules. See AR 340–18–2, file numbers 239–01 through 239–06.

BILLING CODE 3710–08–M

FREEDOM OF INFORMATION ACT (FOIA)/ OPERATIONS SECURITY *(OPSEC)* DESK TOP GUIDE

For use of this form, see AR 340-17 and AR 530-1; the proponent agency is TAGO.

PROBLEM: The release of information from Department of the Army records must comply with the Freedom of Information Act (FOIA) and AR 340-17. At the same time, sensitive information concerning military operations and activities must be protected from disclosure to hostile intelligence services and their agents.

SOUTION: Following references to AR 340-17 and AR 530-1 outline proper policies and procedures.

Paragraph 5-200d, AR 340-17. Assigns areas of responsibility to the Initial Denial Authorities (IDA) for the Army. Only the Secretary of the Army and IDAs may deny a request for information submitted to the Army under the FOIA.

Paragraph 3-200, AR 340-17. Outlines the nine categories of records exempt from mandatory release under the FOIA. Denial under the exemptions is not automatic; each case must be reviewed and denial justified in each instance.

Paragraph 5-100c, AR 340-17. Discusses OPSEC considerations when reviewing information requested under the FOIA.

Paragraph 3-12, AR 530-1. Requires commanders to designate an OPSEC officer at battalion and higher levels of command to assist in discharging their responsibilities for Operations Security.

Paragraph 5-100d, AR 340-17. Invests command OPSEC points of contact with FOIA advisory functions. They will advise and assist FOIA personnel in dealing with requests for information that have OPSEC implications.

CAUTION: DOCUMENTS PROPERLY CLASSIFIED UNDER EXECUTIVE ORDER 12065 ARE AUTOMATICALLY REVIEWED FOR OPERATIONS SECURITY IMPACT; HOWEVER, THE COMPILATION OF UNCLASSIFIED DOCUMENTS, OR PORTIONS THEREOF, MAY COMBINE INFORMATION THAT, IF RELEASED, MIGHT CAUSE DAMAGE TO NATIONAL SECURITY (*para 2-211, AR 380-5*). If you have any questions about releasing information, immediately contact your command OPSEC/FOIA advisor.

COMMAND OPSEC/FOIA ADVISOR:	TELEPHONE NO.

DA FORM 4948-R, APR 82 EDITION OF DEC 80 IS OBSOLETE.

BILLING CODE 3710-08-C

Subpart B—FOIA Reading Rooms

§ 518.5 Requirements.

(a) *Reading room.* Each Component shall provide an appropriate facility or facilities where the public may inspect and copy or have copied the materials described below. DoD Components may share reading room facilities if the public is not unduly inconvenienced. The cost of copying shall be imposed on the person requesting the material in accordance with the provisions of Subpart F. The Army FOIA Reading Room is located in room T7, Hoffman Building, 2461 Eisenhower Avenue, Alexandria, VA 22331. It is open from 0800 to 1530 Monday through Friday, except holidays.

(b) *Material availability.* The FOIA requires that so-called "(a)(2)" materials shall be made available in the FOI reading room for inspection and copying, unless such materials are published and copies are offered for sale. Identifying details that, if revealed, would create a clearly unwarranted invasion of personal privacy may be deleted from "(a)(2)" materials made available for inspection and copying. In every case, justification for the deletion must be fully explained in writing. However, a DoD Component may publish in the **Federal Register** a description of the basis upon which it will delete identifying details of particular types of documents to avoid clearly unwarranted invasions of privacy. In appropriate cases, the DoD Component may refer to this description rather than write a separate justification for each deletion. So-called "(a)(2)" materials are:

(1) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551 that may be cited, used, or relied upon as precedents in future adjudications.

(2) Statements of policy and interpretations that have been adopted by the agency and are not published in the **Federal Register**.

(3) Administrative staff manuals and instructions, or portions thereof, that establish DoD policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DoD Component. Examples of manuals and instructions not normally made available are:

(i) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(ii) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

§ 518.6 Indexes.

(a) *"(a)(2)" materials.* (1) Each DoD Component shall maintain in each facility prescribed in § 518.5(a) an index of materials described in § 518.5(b) that are issued, adopted, or promulgated, after July 4, 1967. No "(a)(2)" materials issued, promulgated, or adopted after July 4, 1967 that are not indexed and either made available or published may be relied upon, used, or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before July 4, 1967, need not be indexed, but must be made available upon request if not exempted under this Regulation.

(2) Each DoD Component shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of "(a)(2)" materials or supplements thereto unless it publishes in the **Federal Register** an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in

(3) Each index of "(a)(2)" materials or supplement thereto shall be arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for DoD Component convenience.

(b) *Other materials.* (1) Any available index of DoD Component material published in the **Federal Register**, such as material required to be published by Section 552(a)(1) of the FOIA, shall be made available in DoD Component FOIA reading rooms.

(2) Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, "(a)(1)" materials shall, when feasible, be made available in FOIA reading rooms for inspection and copying. Examples of "(a)(1)" materials are: Descriptions of an agency's central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

Subpart C—Exemptions

§ 518.7 General provisions.

(a) *General.* Records that meet the exemption criteria in § 518.8 be withheld from public disclosure and need not be published in the **Federal Register**, made available in a library reading room, or provided in response to an FOIA request.

(b) *Jeopardy of Government interest.* An exempted record, other than those being withheld pursuant to exemptions 1, 3 or 6, shall be made available upon the request of any individual when, in the judgment of the releasing DoD Component or higher authority, no jeopardy to government interest would be served by release. It is appropriate for DoD Components to use their discretionary authority on a case-by-case basis in the release of given records. If a DoD Component determines that a record requested under the FOIA meets the Exemption 4 withholding criteria set forth in this Regulation, the DoD Component shall not ordinarily exercise its discretionary power to release, absent circumstances in which a compelling public interest will be served by release of that record.

§ 518.8 Exemptions.

FOIA Exemptions. The following types of records may be withheld in whole or in part from public disclosure unless otherwise prescribed by law. These exemptions are from 5 U.S.C. 552(b).

(a) *Number 1.* Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as DoD 5200.1–R. Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoD 5200.1–R, Section 2–204f apply. *Procedures in AR 380–5 apply to Army activities.*

(b) *Number 2.* Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of a DoD Component if their release to the public would substantially hinder the effective performance of a significant function of the Department of Defense and they do not impose

requirements directly on the general public. Examples include:

(1) Those operating rules, guidelines, and manuals for the DoD (*Army*) investigators, inspectors, auditors, or examiners that must remain privileged in order for the DoD Component (*Army*) to fulfill a legal requirement.

(2) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

(3) *Negotiation and bargaining techniques, practices, and limitations.*

(c) *Number 3.* Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of statutes are:

(1) National Security Agency Information Exemption, Pub. L. 86–36, Section 6.

(2) Patent Secrecy, 35 U.S.C. 181–188. Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(3) Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162.

(4) Communication Intelligence, 18 U.S.C. 798.

(d) *Number 4.* Those containing trade secrets or commercial or financial information that a DoD Component receives from a person or organization outside the government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the government's ability to obtain necessary information in the future; or impair some other legitimate government interest. Examples include records that contain:

(1) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

(2) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(3) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(4) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate employees within the Department of Defense.

(5) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(e) *Number 5.* Except as provided in §§ 518.8(e) (2) through (5), below, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e)) or within or among DoD Components.

(1) Examples include:

(i) The nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice, opinions or suggestions.

(ii) Advice, suggestions, or evaluations prepared on behalf of the Department of Defense by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(iii) Those nonfactual portions of evaluations by DoD Component personnel of contractors and their products.

(iv) Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease, or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

(v) Trade secret or other confidential research development, or commercial information owned by the government, where premature release is likely to affect the government's negotiating position or other commercial interests.

(vi) Records that are exchanged among agency personnel and within and among DoD Components or agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any federal, state, or military court, as well as records that qualify for the attorney-client privilege.

(vii) Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(2) If any such intra or interagency record or reasonably segregable portion of such record hypothetically would be made available routinely through the "discovery process" in the course of litigation with the agency, i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing, then it should not be withheld from the general public even though discovery has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interests of the agency in maintaining its confidentiality, then the record or document need not be made available under this Regulation.

(3) Intra or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(4) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(5) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(f) *Number 6.* Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy.

(1) Examples of other files containing personal information similar to that contained in personnel and medical files include:

(i) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(ii) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(2) In determining whether the release of information would result in a "clearly unwarranted invasion of personal privacy," consideration shall be given to the stated or ascertained purpose of the request. When determining whether a release is "clearly unwarranted," the public interest in satisfying this purpose must be balanced against the sensitivity of the privacy interest being threatened. This exemption shall not be exercised in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family.

(i) Requesters of information about other persons should state the purpose of their request. If no purpose is stated or apparent, an office responding to the request may contact the requester to determine what the purpose is.

(ii) If a requester's interest can be adequately served by release of information that is not linked to a specific person, an IDA may provide such information after deleting the names, personal identifiers, and other identifying information of persons other than the requester.

(3) Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DoD Directive 5400.11. The Army implementing directive is AR 340–21.

(4) A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical, or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record.

(5) Requests for access to or release of records of courts-martial or special courts-martial involving a bad conduct discharge before appellate review should be handled per appendix B. This guidance does not preclude the furnishing of records of a trial to an accused.

(g) *Number 7.* Those investigative records compiled for the purpose of enforcing civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law.

(1) This exemption applies, however, only to the extent that release of a record or portion of a record would:

(i) Interfere with enforcement proceedings.

(ii) Deprive a person of the right to a fair trial or to an impartial adjudication.

(iii) Constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of a deceased individual identified in such a record.

(iv) Disclose the identity of a confidential source.

(v) Disclose confidential information furnished only from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(vi) Disclose investigative techniques and procedures not already in the public domain and requiring protection against public disclosure to ensure their continued effectiveness.

(vii) Endanger the life, physical safety, or well-being of law enforcement personnel or their families.

(2) Examples include:

(i) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(ii) The identity of firms or individuals being investigated for alleged irregularities involving contracting with Department of Defense (Army) when no indictment has been obtained nor any civil action filed against them by the United States.

(iii) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information. For Army, this includes non-criminal law enforcement investigations, such as Inspector General investigations.

(3) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500), is not diminished.

(4) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DoD Directive 5400.11. *The Army implementing directive is AR 340–21.*

(h) *Number 8.* Those contained in or related to examination, operation, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(i) *Number 9.* Those containing geological and geophysical information and data (including maps) concerning wells.

Subpart D—For Official Use Only

§ 518.9 General provisions.

(a) *General.* Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA exemptions 2 through 9 (§ 518.8) shall be considered as being For Official Use Only. *No other material shall be considered or marked "For Official Use Only"* (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests.

(b) *Prior FOUO application.* The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply in withholding the record or portions of it. In the event any exemption(s) applies(y), it may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release.

(c) *Historical papers.* Records such as notes, working papers, and drafts retained as historical evidence of DoD Component actions enjoy no special status apart from the exemptions under the FOIA (reference (a)).

(d) *Time to mark records.* The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releasable without examination for the presence of

information that requires continued protection and qualifies as exempt from public release. Only commissioned officers, warrant officers, enlisted personnel in grades E–7 and above, and civilian employees in grades GS–8 and above can designate material FOUO.

(e) *Distribution statement.* Information in a technical document that requires a distribution statement pursuant to DoD Directive 5200.20 shall bear that statement and shall not be marked FOUO.

§ 518.10 Markings.

(a) *Location of markings.* (1) An unclassified document containing FOUO information shall be marked "For Official Use Only" in bold letters at least 3/16 of an inch in height at the bottom of the outside of the front cover (if any), on the first page, on the back page, and on the outside of the back cover (if any). "FOUO" will not be used for such marking.

(2) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(3) Within a classified or unclassified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page.

(4) Other records, such as, photographs, films, tapes, or slides, shall be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein. Markings on microforms will conform to the requirements of paragraphs b and c above and to appendices C and D of AR 340–22. As a minimum, each frame of a microform containing FOUO information will be marked For Official Use Only at the bottom, center of the appropriate page or frame. For computer generated reports, some software utility programs have been developed which place classified or protective markings at the top as well as the bottom of a page or frame of a microform. This practice is acceptable since it exceeds the minimum requirements of this regulation.

(5) FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

This document contains information Exempt From Mandatory Disclosure under the FOIA. Exemptions —— apply.

(6) Permanently bound volumes need to be marked only on the outside of the front and back covers, title page, and first and last pages. Volumes stapled by office-type hand or electric staples are not permanently bound.

§ 518.11 Dissemination and transmission.

(a) *Release and transmission procedures.* Until FOUO status is terminated, the release and transmission instructions that follow apply:

(1) FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(2) DoD holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches to fulfill a government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use Only," and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

(3) Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4. Army implementing instructions are in § 518.14(d)(1)(i), and AR 1–20. Release to the General Accounting Office (GAO) is governed by DoD Directive 7650.1. Army implementing instructions are in AR 36–20. Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided an explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

(b) *Transporting FOUO Information.* Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations may be sent by fourth-class mail. Attach DA Label 87 (For Official Use Only Cover Sheet) to material when removed from storage.

(c) *Electrically transmitted messages.* Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures in ACP–121 (U.S. Supp 1) for FOUO information.

§ 518.12 Safeguarding FOUO information.

(a) *During duty hours.* During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to nongovernmental personnel. When material marked FOUO is removed from storage DA Label 87 will be attached.

(b) *During nonduty hours.* At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, desks, or bookcases. FOUO records that are subject to the provisions of Pub. L. 86–36 shall meet the safeguards outlined in any system notice for that group of records. Army personnel handling National Security Agency (NSA) records will follow NSA instructions on storing and safeguarding those records.

§ 518.13 Termination, disposal and unauthorized disclosures.

(a) *Termination.* The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage

need not be retrieved solely for that purpose.

(b) *Disposal.* (1) Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

(2) Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. Ch 33 as implemented by DoD Component instructions concerning records disposal. Army implementing instructions are in the AR 340–18 series.

(c) *Unauthorized disclosure.* The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in criminal sanctions against responsible persons. The DoD Component that originated the FOUO information shall be informed of its unauthorized disclosure.

Subpart E—Release and Processing Procedures

§ 518.14 General provisions.

(a) *Public Information.* (1) Since the policy of the Department of Defense is to make the maximum amount of information available to the public consistent with its other responsibilities, written request for a DoD or Department of the Army record made under the FOIA may be denied only when:

(i) The record is subject to one or more of the exemptions in subpart C, III of this Regulation, and no governmental interest will be jeopardized by its release.

(ii) The record has not been described well enough to enable the DoD Component to locate it with a reasonable amount of effort by an employee familiar with the files.

(iii) The requester has failed to comply with the procedural requirements, including the written agreement to pay or payment of any required fee imposed by the instructions of the DoD Component concerned. When personally identifiable information in a record is requested by the subject of the record or his attorney, notarization of the request may be required.

(2) Individuals seeking DoD information should address their FOI requests to one of the addresses listed in Appendix B.

(3) Release of information under the FOIA can have adverse impact on OPSEC. The Army implementing directive for OPSEC is AR 530–1. The AR requires that OPSEC points of contact be named for all HQDA staff agencies and all commands down to battalion level. Persons named OPSEC points of contact will be OPSEC/FOIA advisors. The command OPSEC/FOIA advisor should implement policies and procedures in AR 530–1, consistent with this AR. The following will help ensure that OPSEC matters are adequately considered:

(i) Documents or parts of documents properly classified in the interest of national security must be protected. Classified documents may be released in response to an FOIA request only under chapter III of AR 380–5. If all of a document cannot be declassified, the parts that require continued protection must be clearly identified; any remaining parts that can reasonably be segregated may be released, under AR 380–5.

(ii) The release of unclassified documents could violate national security. If this appears to be the case, FOIA personnel should request a classification evaluation under paragraphs 2–204, 2–600, 2–800, and 2–801 of AR 380–5. In such cases, other FOIA exemptions may also apply.

(iii) A combination of unclassified documents, or parts of them, could combine information that together might violate national security if released. If this appears to be the case, consider classifying the combined information per paragraph 2–211 of AR 380–5.

(iv) A document or information may not be properly or currently classified when an FOIA request for it is received. In this case, the request may not be denied on the grounds that the document or information is classified, except with approval of the Army General Counsel.

(4) OPSEC/FOIA advisors will:

(i) Advise persons processing FOIA requests on OPSEC requirements related to requests for documents.

(ii) Help FOIA personnel prepare requests for classification evaluations.

(iii) Help FOIA personnel identify the parts of documents that must remain classified under this paragraph and AR 380–5.

(iv) Prepare a narrative description (for the triannual report required by § 518.22 of those FOIA requests received during the reporting period that have OPSEC implications.

(5) FOIA personnel and proponents processing FOIA requests must protect classified or exempted information; OPSEC/FOIA advisors do not relieve them of that responsibility.

(b) *Requests from private citizens.* The provisions of the FOIA are reserved for persons with private interests as opposed to governments seeking information. Foreign governments seeking information from DoD Components should use established official channels for obtaining information. Release of records to individuals under the FOIA is considered public release of information, except as provided for in § 518.4(f).

Even though the following records are exempt from disclosure to the general public, DA officials will release them on request to the persons specified below. Although this is not disclosure to the general public (§ 518.4(f)) the 10-day limit (§ 518.4(d)) applies.

(1) *Medical records.* (i) Commanders or chiefs of medical treatment facilities will release—

(A) Information on the condition of sick or injured patients to the patients' relatives.

(B) Information that a patient's condition has become critical to the nearest known relative, or the person the patient names to be informed in an emergency.

(C) Information that a diagnosis of psychosis has been made to the nearest known relative, or the person named by the patient.

(D) Information on births, deaths, and cases of communicable diseases to local officials (if required by local laws).

(ii) Commanders or chiefs of medical treatment facilities and records centers will release records and information as follows:

(A) Medical records of present or former service members, dependents, civilian employees, or patients in DA medical facilities are the treated persons' concern. Copies of parts of those records will be released to the person concerned at his or her request; copies will also be released to a representative named (in writing) by the person concerned. The attending physician can withhold records if he or she thinks it may injure the person's mental or physical health; however, copies of records will be released to the

person's next of kin or legal representative, or the doctor assuming the person's treatment. If the patient is adjudged insane, or is dead, the copies will be released (on written request) to the patient's next of kin or legal representative.

(B) Copies of records may be given to the Federal or State hospital or penal institution if the person concerned is an inmate or patient there.

(C) Copies of medical records or information from them may be given to authorized representatives of certain agencies. The National Academy of Sciences, the National Research Council, and other accredited agencies are eligible when they are engaged in cooperative studies with the approval of The Surgeon General of the Army. Certain information on drug and alcohol use cannot be released. The Army's alcohol and drug abuse prevention and control program is discussed in AR 600–85.

(D) Copies of pertinent parts of a patient's records can be furnished to the staff judge advocate or legal officer of the command in connection with the Government's collection of a claim. He or she can release this information to the tort-feasor's insurer, if proper, without the patient's consent.

Note.—Information released to third parties under (A), (B), and (C) above must include a statement of release conditions. The statement will specify that the information not be disclosed to other persons except as privileged communication between doctor and patient.

(2) Military personnel records. Military personnel records will be released by the custodian as follows:

(i) DA must provide certain information about the service of a person (statement of military service) to that person or his or her legal representative.

(ii) Papers relating to applications for designation of beneficiaries under, and allotments to pay premiums for, National Service Life Insurance or Servicemen's Group Life Insurance will be released to applicant or insured. If the insured is adjudged insane or dies, the records will be released on request to designated beneficiaries, or the next of kin.

(iii) Copies of DA documents that record the death of a service member, a dependent, or a civilian employee will be released to that person's next of kin, life insurance carrier, and legal representative. Persons acting on behalf of another person must include with any request evidence in writing of their representative capacity. If the release of the requested information is limited to the person concerned, he or she may authorize release to other persons or organizations. They must present written consent of the person concerned.

(iv) Papers relating to the pay and allowances or allotments of a present or former servicemember will be released to the person concerned, or his or her authorized representative. These papers, if the person is deceased, will be released to the next of kin or legal representative.

(3) Civilian personnel records. Civilian personnel officers (CPOs) with custody of papers relating to the pay and allowances or allotments of current or former civilian employees will release them to the person concerned or his or her authorized representative. If the employee is dead, these records will be released to the next of kin or legal representative. A CPO cannot release statements of witnesses, medical records, or other reports or documents pertaining to compensation for injuries or death of a DA civilian employee (chap. 294, Federal Personnel Manual). Only officials in § 518.15(a)(4) can release such information.

(4) Release of information to the public concerning accused persons before determination of the case. The release of certain information to the public concerning accused persons may prejudice the accused's opportunity for a fair and impartial determination of the case. The following procedures apply to release in such cases:

(i) Information that can be released. Subject to paragraph (b)(4)(ii) of this section, the following information concerning persons accused of offense may be released by the convening authority to public news agencies or media:

(A) The accused's name, grade or rank, age, residence or unit, regular assigned duties, marital status, and other similar background information.

(B) The substance or text of the offense of which he or she is accused.

(C) The identity of the apprehending or investigating agency and the length or scope of the investigation before apprehension.

(D) The factual circumstances immediately surrounding the apprehension of the accused, including the time and place of apprehension, resistance, and pursuit.

(E) The type and place of custody, if any.

(ii) Information that will not be released. Before evidence has been presented in open court, only incontrovertible factual matters will be released; no subjective observations will be released. Background information or information relating to the circumstances of an apprehension may be prejudicial to the best interests of the accused; such information will not be released except under paragraph (b)(4)(iii) of this section, unless it serves a law enforcement function. The following will not be released:

(A) Observations or comments on an accused's character and demeanor, including those at the time of apprehension and arrest or during pretrial custody.

(B) Statements, admissions, confessions, or alibis attributable to an accused, or the refusal or failure of the accused to make a statement.

(C) Reference to confidential sources, investigative techniques and procedures, investigator notes, and activity files. This includes fingerprint tests, polygraph examinations, blood tests, firearms identification tests, or other similar laboratory tests or examinations.

(D) Statements of the identity, credibility, or testimony of prospective witnesses.

(E) Statements of evidence or argument in the case, whether or not that evidence or argument may be used at the trial.

(F) Any opinion on the accused's guilt.

(G) Any opinion on the possibility of a plea of guilty to the offense charged, or of a plea to a lesser offense.

(iii) Other considerations.

(A) Photographing or televising accused. DA personnel should not encourage or volunteer assistance to news media in photographing or televising an accused or suspected person being held or transported in military custody. DA representatives should not make available photographs of an accused or suspect unless a law enforcement function is served. Requests from news media to take photographs during a court-martial are governed by AR 360–5.

(B) Fugitives from justice. This paragraph does not restrict the release of information to enlist public aid in apprehending a fugitive from justice.

(C) Exceptional cases. Permission to release information prohibited under § 518.14(b)(2) above to public news agencies or media may be requested from The Judge Advocate General. Requests for information from DA records prohibited under § 518.14(b)(2) above will be processed according to this AR.

(5) Litigation, tort claims, and contract disputes. Release of information or records under this paragraph is subject to the time limitations prescribed in § 518.15(e). The requester must be advised of the reasons for nonrelease or referral.

(i) Litigation.

(A) Each request for a record related to pending litigation involving the United States will be referred to the staff judge advocate or legal officer of the command. He or she will promptly inform the Litigation Division, Office of the Judge Advocate General, of the substance of the request and content of the record requested. (Mailing address—HQDA(DAJA–LT), WASH DC 20310; telephone—AUTOVON 227–3462, or commercial (202) 697–3462.)

(B) If information is released for use in litigation involving the United States, the official responsible for investigative reports (para 2–4, AR 27–40) must be advised of the release. He or she will note the release in such investigative reports.

(C) Information or records normally exempted (personnel and medical records) for use in litigation to which the United States is not a party may be releasable to the judge or court concerned. Refer such requests to the local staff judge advocate or legal officer. He or she will coordinate it with the Litigation Division, OTJAG ((A) above).

(ii) Tort claims.

(A) A claimant or his or her attorney may request a record that relates to a pending administrative tort claim filed against the DA. Refer such requests promptly to the claims approving or settlement authority with monetary jurisdiction over the pending claim. These authorities will follow AR 27–20. The request may concern an incident in which the pending claim is not as large as a potential claim that has not yet been filed; in such a case, refer the request to the authority with monetary jurisdiction over the potential claim.

(B) A potential claimant or his or her attorney may request information under circumstances clearly indicating that it will be used to file a tort claim, though none has been filed yet. Refer such requests to the staff judge advocate or legal officer of the command. That authority, when subordinate, will promptly inform the Chief, U.S. Army Claims Service, of the substance of the request and the content of the reord. The mailing address is Fort George G. Meade, MD 20755; the telephone, AUTOVON 923–7860 or commercial (301) 677–7860.

(C) IDA officials in paragraph 5–200d who receive requests under paragraphs (a) or (b) of this section will refer them directly to the Chief, U.S. Army Claims Service. They will also advise the requesters of the referrals and the basis for them.

(D) The Chief, U.S. Army Claims Service, will process requests according to this AR and paragraph 1–6, AR 27–20.

(iii) Contract disputes. Each request for a record that relates to a potential contract dispute or a dispute that has not reached "final decision" by the contracting officer will be treated as a request for "procurement records" and not as "litigation;" however, the official listed in § 518.14(b)(4) and § 518.15(a)(4) will consider the effect of release on the potential dispute. He or she may consult with the U.S. Army Legal Services Agency. (The address is U.S. Army Legal Services Agency, ATTN: JALS–CA, Nassif Building, 5611 Columbia Pike, Falls Church, VA 22041. Telephone numbers are AUTOVON 289–2023, or commercial (202) 756–2023.) If the request is for a record that relates to pending contract appeal to the Armed Services Board of Contract Appeals, or to a "final decision" that is still subject to appeal (30 days have not lapsed after receipt of the "final decision" by the contractor), then the request will be—

(A) Treated as a request involving a contract dispute;

(B) Referred to the U.S. Army Legal Services Agency. (Use the address and telephone number above.)

(c) Requests from Government Officials. Requests from officials of federal, state, or local governments for DoD Component records shall be honored on an expeditious basis whenever possible. For purposes of determining whether the record or records shall be provided, such officials acting in an individual capacity shall be considered the same as any other requester.

(d) Privileged Release to Officials.

(1) Subject to the provisions of DoD Regulation 5200.1–R (AR 380–5), applicable to classified information, DoD Directive 5400.11 (AR 340–21), applicable to personal privacy, or other applicable law, records exempt from release under Subpart C may be authenticated and released, in accordance with DoD Component regulations, to officials requesting them on behalf of local, state or federal governmental bodies, whether legislative, executive, administrative, or judicial, as follows:

(i) To Congress, in accordance with DoD Directive 5400.4 *The Army implementing directive is AR 1–20. Handle requests by members of Congress (or staffs of Congressional committees) for inspection of copies of official records as follows:*

(A) National security classified records. Follow AR 380–5.

(B) Civilian personnel records. Members of Congress may examine official personnel folders as permitted by FPM Chapter 29.47 governing the release of disciplinary action information.

(C) Information related to disciplinary action.

(1) Disciplinary actions records referred to here are records of trial by courts-martial; nonjudicial punishment of military personnel under the Uniform Code of Military Justice, Article 15; nonpunitive measures such as administrative reprimands and admonitions; suspensions of civilian employees; and other similar documents.

(2) If DA has not issued specific instructions on the request, the instructions in paragraphs (d) (3) and (4) of this section will apply.

(3) Subordinate commanders will not release any information without securing the consent of the proper installation commander.

(4) The installation commander may release the information unless the request is for a classified or "For Official Use Only" document. He or she will refer such requests promptly to the Chief of Legislative Liaison (see (D) below) for action. He or she will include the recommendations of the transmitting agency and copies of the requested records with the referral.

(D) Military personnel records. Only HQDA can release information from these records. Custodians will refer all requests from Congress directly and promptly to the Chief of Legislative Liaison, Department of the Army, (HQDA(SALL)) WASH DC 20310.

(E) Criminal investigation records. Only the Commanding General, U.S. Army Criminal Investigation Command, can release any CIDC-originated criminal investigation file. For further information see AR 195–2.

(F) Other exempt records. Commanders or chiefs will refer requests for all other categories of exempt information (under § 518.8 directly to the Chief of Legislative Liaison per (D) above. They will include a copy of the material requested and, as appropriate, recommendations concerning its release or denial.

(G) All other records. The commander or chief with custody of the records will furnish all other information promptly.

(H) Notice of releases to Congress. Commanders or chiefs will notify the Chief of Legislative Liaison of all releases of information to Members of Congress or staffs of congressional committees. Organizations that in the normal course of business are required to provide information to Congress may be excepted.

(ii) To the federal courts, whenever ordered by officers of the court as

necessary for the proper administration of justice.

(iii) To other federal agencies, both executive and administrative, as determined by the head of a DoD Component or designee.

(A) Disciplinary actions and criminal investigations. Requests for access to, or information from, the records of disciplinary actions or criminal investigations will be honored if proper credentials are presented. Representatives of the Office of Personnel Management may be given information from personnel files of employees actually employed at the installation. Each such request will be considered on its merits; the information released will be the minimum required in connection with the investigation being conducted. See CPR 296–31.

(B) Other types of requests. All other official requests received by DA elements from agencies of the Executive branch (including other military departments) will be honored, if there are no compelling reasons to the contrary. If there are reasons to withhold the records, the requests will be submitted for determination of the propriety of release to the appropriate addressee shown in appendix B.

(iv) To state and local officials, as determined by the head of a DoD Component or designee.

(A) DoD Components shall inform officials receiving records under the provisions of § 518.14b(2) that those records are exempt from public release under the FOIA and are privileged. DoD Components shall also advise officials of any special handling instructions.

§ 518.15 Initial determinations.

(a) *Initial Denial Authority.* (1) Components shall limit the number of IDAs appointed. In designating its IDAs, a DoD Component shall balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA. The DA officials in paragraph (a)(4) of this section are designated as DA's only initial denial authorities. Each IDA will act on direct and referred requests for records within his or her area of functional responsibility. (See the proper AR in the 10-series for full discussions of these areas; they are outlined in paragraph (a)(4) in this section.) This includes records created or kept within the IDA's area of responsibility; records retired by, or referred to, the IDA's headquarters or office; and records of predecessor organizations. If a request involves the areas of more than one IDA, the IDA to whom the request was originally addressed will usually respond to it; however, the affected IDAs may consult on such requests and agree on responsibility for them. IDAs will complete all required coordination at initial denial level.

(2) The initial determination of whether to make a record available or grant a fee waiver upon request may be made by any suitable official designated by the DoD Component in published regulations. The presence of the marking "For Official Use Only" does not relieve the designated official of the responsibility to review the requested record for the purpose of determining whether an exemption under this Regulation is applicable and should be invoked. IDAs may delegate all or part of their authority to an office chief or subordinate commander. Such delegations must not slow FOIA actions. If an IDA's delegate denies an FOIA or fee waiver request, he or she must clearly state that he or she is acting for the IDA. IDA's will send the names, offices, and telephone numbers of their delegates to The Adjutant General. IDAs will keep this information current. (The mailing address is HQDA(DAAG–AMS–R), Alexandria, VA 22331.)

(3) The officials designated by DoD Components to make initial determinations should consult with public affairs officers (PAOs) to become familiar with subject matter that is considered to be newsworthy, and advise PAOs of all requests from news media representatives. In addition, the officials should inform PAOs in advance when they intend to withhold or partially withhold a record, if it appears that the withholding action may be challenged in the media. An FOIA release or denial action, appeal, or court review may generate public or press interest. In such a case, the IDA (or delegate) should consult the Chief of Public Affairs, or the command or organization PAO. The IDA should inform the Public Affairs office contacted of the issue and obtain advice and recommendations on its handling. Any advice or recommendations requested or obtained should be limited to public affairs issues. This coordination must be completed within the 10-day FOIA response limit. (The point of contact for the Army Chief of Public Affairs is HQDA(SAPA–FOI), WASH DC 20310; AUTOVON 227–4122 or commercial (202) 697–4122.) If the request involves actual or potential litigation against the United States, release must be coordinated with The Judge Advocate General. (See § 518.14(b)(5)).

(4) The following officials are designated IDAs for their areas of responsibility as outlined below. Only an IDA, his or her delegate, or the Secretary of the Army can deny FOIA requests for DA records.

(i) The Administrative Assistant to the Secretary of the Army, is authorized to act for the Secretary of the Army (SA) on requests for all records maintained by the Office of the SA and its serviced activities, as well as those requests requiring the personal attention of the SA.

(ii) The Auditor General is authorized to act on requests for records relating to audits done by the US Army Audit Agency. This includes requests for related records developed by the Audit Agency.

(iii) The Deputy Chief of Staff for Operations and Plans is authorized to act on requests for records relating to strategy formulation; force development; individual and unit training policy; strategic and tactical command and control systems; nuclear and chemical matters; use of DA forces; and records relating to automation and communication.

(iv) The Deputy Chief of Staff for Personnel is authorized to act on requests for case summaries; letters of instruction to boards; civilian personnel records; behavioral science records; safety records; and military police reports.

(v) The Deputy Chief of Staff for Logistics is authorized to act on requests for records relating to DA logistical requirements and determinations; and policy concerning materiel maintenance and use, equipment standards, and logistical readiness.

(vi) The Deputy Chief of Staff for Research, Development, and Acquisition is authorized to act on requests for records created by ODCSRDA relating to the Army's research, development and acquisition programs and activities.

(vii) The Assistant Chief of Staff for Intelligence is authorized to act on requests for foreign scientific and technological information; intelligence training, mapping, and geodesy information; and ground surveillance records.

(viii) The Adjutant General is authorized to act on requests for personnel and medical records of retired, separated, and reserve component military personnel; records relating to Army administrative programs except those of the Secretariat and those requiring the personal attention of the Secretary of the Army; records relating to casualty, memorialization, and retired activities; records relating to recreation, bands, club management, Army Community

Service, Army Emergency Relief, general education, voting, and identification cards; records relating to naturalization, citizenship, consumer protection, survivor benefits, and commercial solicitation policies; and records dealing with DA relationships with social security, veterans' affairs, United Service Organization, United States Soldiers' and Airmen's Home and American Red Cross.

(ix) The Chief of Engineers is authorized to act on requests for records involving civil works, military construction, engineer procurement, and ecology; and the records of US Army Engineer divisions, districts, laboratories, and field operating agencies.

(x) The Surgeon General is authorized to act on requests for medical research and development records; and the medical records of active duty military personnel, dependents, and persons given physical examinations or treatment at DA medical facilities.

(xi) The Comptroller of the Army is authorized to act on requests for finance and accounting records.

(xii) The Chief of Chaplains is authorized to act on requests for records involving ecclesiastical rites performed by DA chaplains, and privileged communications relating to the clergy.

(xiii) The Judge Advocate General (TJAG) is authorized to act on requests for records relating to claims, courts-martial, legal services, and similar legal-type records. TJAG is also authorized to act on requests for records described elsewhere in this AR, if those records relate to litigation in which the United States has an interest. In addition, TJAG is authorized to act on requests for records that are not within the functional area of responsibility of any other IDA.

(xiv) The Chief, National Guard Bureau, is authorized to act on requests for all Army National Guard records, unless such records clearly fall within another IDA's responsibility. This includes National Guard organization and training files; plans, operations, and readiness files; policy files; historical files; and files relating to National Guard military support and civil disturbance activities.

(xv) The Chief, Army Reserve, is authorized to act on requests for all U.S. Army Reserve (USAR) records, unless such records clearly fall within another IDA's responsibility. This includes records relating to USAR plans, policies, and operations; changes in the organizational status of USAR units; mobilization and demobilization policies; active duty tours; and the Mobilization Designation Program.

(xvi) The Inspector General is authorized to act on requests for all Inspector General records, under AR 20–1.

(xvii) The Commanding General, United States Army Materiel Development and Readiness Command (DARCOM), is authorized to act on requests for the records of DARCOM headquarters and its subordinate commands, units, and activities that relate to procurement, logistics, research and development, and supply and maintenance operations.

(xviii) The Commanding General, United States Army Criminal Investigation Command (USACIDC), is authorized to act on requests for criminal investigative records of USACIDC headquarters and its subordinate activities. This includes criminal investigation records, investigation-in-progress records, and military police reports that result in criminal investigation reports.

(xix) The Commanding General, United States Army Military Personnel Center, is authorized to act on requests for military personnel files relating to active duty military personnel matters, and other military personnel administration records (other than those of reserve and retired personnel).

(xx) The Deputy Commander, Intelligence, United States Army Intelligence and Security Command, is authorized to act on requests for intelligence investigation and security records.

(xxi) The General Counsel, Army and Air Force Exchange Service (AAFES), is authorized to act on requests for AAFES records, under AR 60–201/AFR 147–14.

(b) *Reasons for not releasing a record.* There are six reasons provided by the FOIA for not complying with a request for a record. They are:

(1) The information requested is not a record within the meaning of the FOIA and this Regulation.

(2) A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

(3) The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this Regulation or DoD Component supplementing regulations. (See § 518.4)

(4) The DoD Component determines through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record. (A "no record" determination is not considered a denial; therefore, an appeal is not appropriate.)

(5) The DoD Component determines that the request should be handled under the provisions of the Privacy Act. DA policy is in § 518.2(b).

(6) The record is denied in accordance with procedures set forth in the FOIA and this Regulation.

(c) *Denial tests.* To deny a requested record that is in the possession and control of a DoD Component, it must be determined that the denial meets the following tests:

(1) The record is included in one or more of the nine categories of records exempt from mandatory disclosure as provided by the FOIA and outlined in chapter III of this Regulation.

(2) The use of its discretionary authority is deemed unwarranted.

(d) *Reasonably segregable portions.* Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when the meaning of these portions is not distorted by deletion of the denied portions and when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not possible to reasonably segregate meaningful portions of the record for release.

(e) Response to requester. (1) Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 working days after receipt of the request by the official designated to respond. The action command or office with the records will date and time stamp each request on receipt. The 10-day limit will start from the date stamped.

(2) When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with preliminary procedural requirements.

(3) When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the name and title or position of the official who made the determination, and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemptions on which the denial is based. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable criteria for classification, as well as an

explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to a higher final authority within the DoD Component. The IDA will inform the requester of the right to appeal the denial of the FOIA or fee waiver request. He or she may appeal the denial in whole or in part. The appeal must be sent through the IDA to the Secretary of the Army (ATTN: General Counsel). See § 518.16.

(4) The response to the requester should contain information concerning the fee status of the request. Generally, the information shall reflect one or more of the following conditions:

(i) All fees due have been received.

(ii) Fees have been waived because they fall below the automatic fee waiver threshold.

(iii) A request for waiver has been denied.

(iv) Fees have been waived or reduced from a specified amount to another specified amount because the rationale provided in support of a request for waiver has been accepted.

(v) Fees due in a specified amount have not been received.

(5) The explanation of the substantive basis for a denial shall include specific citation of the statutory exemption applied under provisions of this Regulation. Merely referring to a classification or to a "For Official Use Only" marking on the requested record does not constitute a proper citation or explanation of the basis for invoking an exemption.

(6) When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request.

(f) *Extension of time.* (1) In unusual circumstances, when additional time is needed to respond, the DoD Component shall acknowledge the request in writing within the 10-day period, describe the circumstances requiring the delay, and indicate the anticipated date for substantive response that may not exceed 10 additional working days. Unusual circumstances that may justify delay are:

(i) The requested record is located in whole or in part at places other than the office processing the request.

(ii) The request requires the collection and evaluation of a substantial number of records.

(iii) Consultation is required with the DoD Components or agencies having substantial interest in the subject matter to determine whether the records requested are exempt from disclosure in whole or in part under provisions of this Regulation or should be released as a matter of discretion.

(2) The statutory extension of time for responding to an initial request must be approved on a case-by-case basis by the final appellate authority for the DoD Component or in accordance with regulations of the DoD Component that establish guidance governing the circumstances in which such extensions may be granted. The time may be extended only once during the initial consideration period. Only the responsible IDA can extend the time limit; he or she must first coordinate with the Office of the Army General Counsel.

(3) In these unusual cases where the statutory time limits cannot be met, and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester, with notification that he may treat the delay as an initial denial with a right to appeal, or that the requester may agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made.

(4) As an alternative to the taking of formal extensions of time as described in paragraph (f), (1), (2) and (3) above, the negotiation by the cognizant FOIA coordinating officer of informal extensions in time with requesters is encouraged where appropriate.

(g) *Misdirected requests.* Misdirected requests shall be forwarded to the DoD Component with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the DoD Component that manages the records requested.

(h) *Records of non-U.S. government source.* When a request is received for a record that was obtained from a non-U.S. Government source, or for a record containing information, clearly identified as having been provided by a non-U.S. Government source, the source of the record or information normally shall be notified promptly of that request and afforded reasonable time to present any objections concerning the release unless it is clear that there can be no valid bases for objection. If for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. When a substantial issue has been raised, the DoD Component may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal issues involved prior to making an agency determination. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the requester shall be notified, and action on the request normally shall not be taken until after the outcome of that court action is known.

(i) *File of initial denials.* Copies of all initial denials shall be maintained by each DoD Component in a form suitable for rapid retrieval, periodic statistical compilation, and managment evaluation.

(j) *Special mail service.* DoD Components are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

(k) *Receipt accounts.* The Treasurer of the United States has established two accounts for FOIA receipts. These accounts, which are described below, shall be used for depositing all FOIA receipts except receipts for industrially funded activities. Industrially funded activity FOIA receipts shall be deposited to the applicable industrial fund.

(1) *Receipt Account 2252, sale of publications and reproduction, Freedom of Information Act.* This account shall be used when depositing funds received from providing existing publications and forms, that meet the Receipt Account Series 2250 description found in Federal Account Symbols and Titles. Deliver all collections received daily to the servicing finance and accounting office. (See AR 37–3Q.)

(2) *Receipt Account 2419.3, Fees and Other Charges for Services, Freedom of Information Act.* This account is used to deposit search fees and fees for duplicating records to satisfy requests that could not be filled with existing publications forms.

§ 518.16 Appeals.

(a) *General.* (1) If the official designated by the DoD Component to make initial determinations on requests for records declines to provide a record because the official considers it exempt, that decision may be appealed by the requester in writing to a designated appellate authority. The appeal should

be acccompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for disagreement with the initial refusal. In addition, the DoD Component may impose a reasonable time limit, which may not be more than 45 days, for the requester to file an appeal. Appeal procedures also applly to the disapproval of a request for waiver or reduction of fees. A "no record" finding may not be appealed, although the requester may ask the agency to search other files or provide more detailed identification to facilitate another search of the files.

(2) Appeals of denial of records made by Army IDAs must be made through the denying IDA to the Secretary of the Army (ATTN: General Counsel). On receipt of an appeal, the IDA will—

(i) Send to the Office of the General Counsel, Office of the Secretary of the Army, the following:

(A) A copy of the documents that are the subject of the appeal, with the portions withheld marked.

(B) The appeal.

(C) The initial denial letter.

(D) Any other relevant material.

(ii) Assist the General Counsel as requested during his or her consideration of the appeal.

(3) Appeals of denial of records made by the General Counsel, AAFES, shall be made to the Secretary of the Army only when the Commander, AAFES, is an Army officer.

(b) *Time of Receipt.* FOI appeal has been received by a DoD Component when it reaches the office of the appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

(c) *Time Limits.* (1) The requester must file an appeal so that it reaches the appellate authority no later than 45 working days after the requester receives notification of an initial denial (from the date of the initial denial letter). At the conclusion of this period, the case may be considered closed. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification. Records which are denied shall be retained during the time premitted for appeal.

(2) Final determinations on appeals normally shall be made within 20 working days after receipt.

(d) *Delay in Responding to an Appeal.* (1) If additional time is needed due to the unusual circumstances described in § 518.15(f), the final decision may be delayed for the number of working days (not to exceed 10), that were not utilized as additional time for responding to the initial request.

(2) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester in writing the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in § 518.15 they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The DoD Component shall continue to process the case expeditiously whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing of a complaint shall be forwarded to the Department of Justice.

(e) *Response of the requester.* (1) When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

(2) Final refusal to provide a requested record or to approve a request for waiver or reduction of fees must be made in writing by the head of the DoD Component or by a designated representative. The response, as a minimum, shall include the following:

(i) The basis for the refusal shall be explained to the requester, in writing, both with regard to the applicable statutory exemption invoked under provisions of this Regulation.

(ii) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing executive order and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

(iii) The final denial shall include the name and title or position of the official responsible for the denial.

(iv) The response shall advise the requester that the material being denied does not contain meaningful portions that are reasonably segregable.

(v) The response shall advise the requester of the right to judicial review.

(f) *Consultation.* (1) Final refusal involving issues not previously resolved or that the DoD Component knows to be inconsistent with rulings of other DoD Components ordinarily should not be made before consultation with the Office of the General Counsel of the Department of Defense.

(2) Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the government shall be brought to the attention of the Freedom of Information Committee of the Department of Justice through the Office of Information Law and Policy.

§ 518.17 Judicial actions.

(a) *General.* (1) This section states current legal and procedural rules for the convenience of the reader. The statements of rules do not create rights or remedies not otherwise available, nor do they bind DoD to particular judicial interpretations or procedures.

(2) A requester may seek an order from a United States District court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the head of a Component or an appellate designee or when the DoD Component has failed to respond within the time limits prescribed by the FOIA and set forth in this Regulation.

(b) *Jurisdiction.* The requester may bring suit in the United States District Court in the district in which the requester resides or is the requester's place of business, in the district in which the record is located, or in the District of Columbia.

(c) *Burden of Proof.* The burden of proof is on the DoD Component to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

(d) *Actions by the Court.* (1) When a DoD Component has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow the Component additional time to complete its review of the records.

(2) If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

(3) When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether DoD Component

personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit System Protection Board will conduct an investigation to determine whether or not disciplinary action is warranted. The DoD Component is obligated to take the action recommended by the special counsel.

(4) The court may punish the responsible official for contempt when a DoD Component fails to comply with the court order to produce records that it determines have been withheld improperly.

(e) *Non-United States Government Source Information.* A requester may bring suit in a U.S. District Court to compel the release of records obtained from a nongovernment source or records based on information obtained from a nongovernment source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the Court or until a decision is rendered in the court action of the source, whichever is sooner.

(f) *Litigation Status Sheet.* Freedom of Information managers at DoD Component level shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Component personnel. The Litigation Status Sheet at Appendix C provides a standard format for recording information concerning FOIA litigation and forwarding that information to the Office of the Secretary of Defense. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint shall forward a Litigation Status Sheet, with items 1 through 6 completed, and a copy of the complaint to the Director for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs). A revised Litigation Status Sheet shall be provided at each stage of the litigation. In DA The Judge Advocate General (HQDA (DAJA/LTZ), WASH, DC 20310) is responsible for preparing this report.

Subpart F—Fee Schedule

§ 518.18 General Provisions.

(a) *Application.* The fees described in this chapter apply to FOIA requests. They reflect direct search and duplication costs, collection of which are permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business nor are they meant as a substitute for any other schedule of fees, such as DoD Instruction 7230.7. AR 37–30 implements DoDI 7230.7.

(b) *Fee Assessment.* (1) The decision to deny a request to waive or reduce fees shall be made by the IDA. The decision to grant a request to waive fees in excess of $100.00, or to reduce fees by more than $100.00, shall be made by the IDA. The IDA's complete or partial denial of a fee waiver may be appealed to the Office of the General Counsel where it shall be considered independently or any prior determination by the IDA regarding whether the fee should be waived or reduced.

(2) When direct search and duplication costs for a single FOIA request total less than $30.00, fees should be waived automatically. The proper DA official, however, may disregard the automatic waiver provision when he or she determines that waiver of fees is not in the public interest. For example, when an official determines that multiple requests from a single requester, or from those acting on behalf of a single requester, are being submitted in order to take advantage of the automatic fee waiver threshold, fees ordinarily shall not be waived.

(3) Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis. Documents shall be furnished by Army activities without charge or at a reduced charge where they determine that waiver or reduction of fees is in the public interest because furnishing the information can be considered as primarily benefiting the general public. It is the responsibility of the requester to document adequately that a waiver or reduction of fees is appropriate by explaining how information of the type the requester expects to find in the records would benefit the general public. A fee reduction may be more appropriate than a complete waiver of all fees in certain circumstances; for example, where a requester only minimally establishes that furnishing information will primarily benefit the general public, or where, although furnishing information may benefit the general public, it will benefit the requester more directly than other members of the public (e.g., financially). Army activities may consider factors such as those listed below in determining that a waiver or reduction of fees is in the public interest, but the existence of one or more of these factors does not require an activity to waive or reduce fees.

(i) The information has the potential to contribute to constructive public discussion and debate, based on the subject matter of the requested information and the scope of its expected dissemination.

(ii) The requester's expected use of the information reflects that: the requester will have access to the media or other means of disseminating the requested information to the public, and the requester will not use the requested information primarily for financial gain.

(iii) The requester is indigent or unable to pay the total amount of the assessed fees; however, a claim of indigency or inability to pay fees does not automatically entitle a requester to a fee waive or reduction.

(iv) The scope and frequency of the requester's previous requests to Army activities, if any, have not been burdensome, and any previous provision of information and waiver of fees has contributed to constructive public discussion and debate.

(v) The activities' monetary and other costs incurred in providing the information will be reasonable in that:

(A) The search for the requested information does not impact unreasonably on the Army activity concerned in accomplishing its primary functional missions, and

(B) The requester has formulated the request to include only that information necessary to satisfy his or her needs.

(4) When a requester can obtain requested information through readily available alternative sources, e.g. the same or similar information already exists in the public domain, fees ordinarily shall not be waived.

(5) Army activities should attempt to anticipate when a search involving more than a $30.00 search fee is likely to be unproductive and notify the requester of this likelihood. Search fees are appropriate if the requester then insists upon a search and agrees to pay assessed fees after being informed that any search is likely to be unproductive or that no releasable information is likely to be found. In addition, fees incurred in a search, of which the requester has knowledge, conducted subsequent to a prior unsuccessful search for substantially the same information, ordinarily shall not be waived.

(6) Search and reproduction fees also may be waived or reduced by the proper DA official whenever he or she determines that waiver or reduction would serve the interest of the government. The following are examples of such circumstances:

(i) The cost of computing and handling the fee would exceed the amount of the fee.

(ii) A requester has reformulated a burdensome request so as to aid an activity in processing the request at less cost.

(iii) The requester agrees to accept a record specifically created by an activity in response to a request in order to avoid an otherwise burdensome effort to provide more voluminous existing records.

(b) *Computation of fees.* The fees schedule contained in this chapter is used to compute the search and duplication costs associated with processing a given FOIA request. Search fees shall be computed based on time actually spent. Neither time-based nor dollar-based minimum charges for search and duplication are authorized.

§ 518.19 Collection of fees and fee rates.

(a) *Collection of fees.* Collection of charges and fees need not be made in advance of rendering the service unless the costs are expected to exceed the fee waiver threshold and the requester has not indicated a willingness in writing to pay. It frequently is more practical to collect charges and fees at the time of providing the service or property to the recipient when the requester specifically states that the cost involved shall be acceptable or acceptable up to a specified limit that covers anticipated costs. Collection of fees in advance is an appropriate requirement only when the requester has not agreed in writing to pay the anticipated fee or has not honored previous commitments to pay fees that were owed an agency or component.

(b) *Search fees.*

(1) Manual Search.

Type	Grade	Hourly rate (dollars)
Clerical	E9/GS8 and below	8
Professional	01–06/GS9–GS–15	16
Executive	07/GS16/F(?) and above	26

(2) Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration.

(3) Actual cost of transporting records or personnel to the search site may be included.

(c) *Duplication Fees.*

Type	Cost per page (cents)
Printed material	01
Office copy	10
Microfiche	25

(d) *Audiovisual Documentary Materials.* Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(e) *Other Records.* Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

Subpart G—Reports

§ 518.20 Reports control.

General. The reporting requirement outlined in this chapter is assigned Report Control Symbol DD–PA(TRA&A) 1365. Prepare the annual report using the format at appendix D; prepare the triannual report on DA Form 4835–R, Freedom of Information Processing Cost Report (fig 7–1). Both the annual and triannual reports are assigned RCS DD–PA(TR&A) 1365.

§ 518.21 Annual Report (RCS–DD–PA(TRA&A)1365).

(a) *Reporting time.* Each DoD Component shall prepare statistics and accumulate paperwork for the preceding calendar year on those items prescribed for the annual report and submit them in duplicate to the ASD(PA) on or before each February 1. Existing DoD standards and registered data elements are to be used for all data requirements to the greatest extent possible in accordance with the provisions of DoD Directive 5000.11 (AR 18–12). The standard data elements are contained in DoD 5000.12–M.

(b) *Annual report content.* (1) The annual report shall contain the following:

(i) *Item 1.* Report the number of public requests (a single FOIA request) completed. Report the number of reportable requests, the number in which a statutory exemption was invoked, and the number in which some other authority resulted in the denial of the request.

Note.—A reportable request is that portion of an FOIA request resulting in a single record or group of records pertaining to one general subject area being acted upon by one IDA who concludes that a single type of determination applies. Example: A single public request that requires the action of three IDAs in determining if a record under their jurisdiction is to be released would be counted as three reportable requests, but one public request. Records released by two IDAs in response to one public request would be counted as two reportable requests.

(ii) *Item 2.* Provide statistics on the specific authorities—statutory exemptions, statutes, and categories of other reasons used in the totals above.

(A) *Item 2(a).* Show the number of times each of the nine statutory exemptions was invoked (the total may not agree with Item 1 because of situations where two or more exemptions were cited for one record).

(B) *Item 2(b).* List the statutes cited when invoking Exemption 3 and the number of times each was cited.

(C) *Item 2(c).* Show the number of times each category of other reasons was cited in response to the public. Five such reportable categories have been established in Appendix E to this Regulation (the total will equal the number reported in Item 1).

(iii) *Item 3.* Provide the number of IDAs authorized. Then list the names and titles or positions of persons cited as IDAs, followed thereafter in two subcolumns by the number of times each person cited exemptions or other authority categories (the vertical columnar totals must match Item 1).

(iv) *Item 4.* Provide the number of appeals that, upon review, were granted in part, or denied, followed by a total of those three numbers.

(v) *Item 5.* Report the three statistical requirements of Item 2 for the appeals that were granted in part or denied.

(vi) *Item 6.* Repeat item 3 for appellate authorities including both subcolumnar statistics.

(vii) *Item 7.* When a court determines that DoD Component records were improperly withheld and issues a finding raising questions on the actions of DoD Component personnel, provide a copy of each such court opinion or order; a copy of the Office of Personnel Management finding and recommendation on each such proceeding; and a report of any disciplinary action taken against the person who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken.

(viii) *Item 8.* List changes or revisions of DoD Component rules or regulations affecting the implementation of FOIA followed by the **Federal Register** reference (number, date, and page) that announced the change or revision to the public. Append a copy of each such change or revised rule or regulation.

(ix) *Item 9.* The amount of fees collected from the public will be

reported triannually to OASD(PA); thus, duplicate annual reporting by DoD Components is not required.

(x) *Item 10.* The following subitems have been established by Congressional request as indicative of DoD Component efforts to administer FOIA.

(A) *Item 10(a).* List all new categories of records now being released in whole or in part under FOIA.

(B) *Item 10(b).* The costs of administering the FOIA Program shall be reported triannually to OASD(PA); thus, duplicate annual reporting by Components is not required. The triannual reports shall be used by the OASD(PA) to portray annual DoD Component and DoD-wide totals.

(C) *Item 10(c).* Report the number of times unusual circumstances required an extension of normal processing time limits, and break down that total by circumstances and by court action. Append a copy of each court opinion or order involving the question of time limits for processing.

(D) *Item 10(d).* Append a copy of all unpublished (not announced in the **Federal Register**) instructions to DoD Component personnel, memoranda, or other issuances that address procedures, definitions, or interpretations of the FOIA promulgated during the year at Major Command level of the DoD Component. Report the number of documents published and whether or not they are publicly available, together with the legal basis for nondisclosure, should that be the case.

(E) *Item 10(e).* Any other information, opinion, or recommendations considered pertinent by the DoD Component.

(xi) *Item 11.* Report descriptions of FOI instructional and educational efforts undertaken by the DoD Component directed toward Component personnel or the public.

(xii) Statistical data required by the items listed above shall be prepared in the format shown in Appendix D.

(xiii) Each IDA will submit the following feeder data for the preceding calendar year to The Adjutant General by 20 January each year:

(A) The information requested in (i) through (xii) above, in the format in appendix D.

(B) A list of denials. This will show, in columns, the source and subject of each denied request; the FOIA exemption number that was the basis for denial; and the name and title (or position) of the official who denied the request. (Usually, the denying official will be the IDA specified in paragraph 5–200d.)

(C) A copy of all of the IDA's internal rules and issuances on the FOIA.

(D) Any other information on efforts to faithfully administer the FOIA.

(2) The Army General Counsel will send to The Adjutant General, by 20 January each year, the following information for the preceding year:

(i) The number of denials appealed.

(ii) The results of such appeals.

(iii) The reasons for each denial upheld.

(iv) The name and title (or position) of the official upholding each denial.

(3) The address for data submission is HQDA(DAAG–AMR), Alexandria, VA 22331. The Adjutant General will compile the data submitted in DA's annual Reporting of Freedom of Information (FOI) Processing Costs (RCS DD–PA (TRA&A) 1365). He or she will send this report to the Director of Freedom of Information and Security Review by 31 January each year. (The address is in paragraph 2a of appendix B.) He or she will send information copies to the Army Chief of Public Affairs and the Army General Counsel.

§ 518.22 Triannual Report (RCS–DD–PA(TRA&A) #1365).

(a) *General.* A portion of the annual reporting requirements has been selected for more frequent reporting to provide management data at intermediate DoD Components and DoD levels. The data selected fall into three areas: (1) Costs attendant to administration of the FOIA program, (2) the amount collected from the public, and (3) the number of reportable requests and appeals.

(b) *Time of report.* (1) Each DoD Component shall prepare statistics triannually (Jan–Apr, May–Aug, Sep–Dec) and, using the outline provided below, report these data to the ASD(PA) on or before 30 days after the close of each 4-month period. The use of DD Form 2086, "Record of Freedom of Information (FOI) Processing Cost," to maintain a record of the cost of each FOIA case shall provide the data needed for compiling the data in this report.

(2) The cost of administering the Freedom of Information Act program, and certain other information, must be reported three times a year to the Director of Freedom of Information and Security Review, OASD(PA). This data should be taken from the DD Form 2086 kept for each case, and compiled on DA Form 4835–R (See figure 7–1). This form will be reproduced locally.

(3) IDAs, and all other DA commands, agencies, and activities that process FOIA requests must submit feeder data for this report. Commanders of major commands will consolidate reports of subordinate activities.

(4) The feeder data reports must be submitted to HQDA(DAAG–AMR–S), Alexandria, VA 22331. They must arrive at that office by—

(i) 20 May (for the report period ending 30 April).

(ii) 20 September (for the period ending 31 August).

(iii) 20 January (for the report period ending 31 December).

(5) Extensions of the required dates in (4) above will not be granted.

(6) DA Form 4835–R will be used for the triannual report submitted to TAG.

(7) TAG will compile the data and submit it to OSAD (PA) in the format in appendix G on or before 30 days after the end of each reporting period.

(c) *Triannual Report Outline.*

Note.—Army users will use DA Form 4835–R (figure 7–1).

(1) The Triannual Report shall include the following:

(i) Reporting Activity:

(ii) Period of Report:

(A) Cost of Routine Requests Processed:

(B) No. of reportable requests × (cost factor per request)—$——

(C) Personnel Costs (Civilian and Military):

(D) Direct costs of personnel assigned FOI duties based upon estimated payroll manyears by grade: ——— Cost: $——

(E) Direct costs for other personnel involved in processing requests not included above based upon accumulation of total hourly data:

(1) Search Time Costs: ——

(2) Review and Excising: ——

(3) Coordination and Approval/Denial.

(4) Decision Costs: ——

(5) Correspondence and Form Preparation: ——

(6) Other Activity Costs: ——

Total Manhour Costs: $——

(F) Application of Overhead:

(Subtotal a) × (Subtotal b) × (overhead rate): $——

Total of Direct Personnel Cost and Overhead: $——

(G) Other Case Related Costs:

(1) Computer—$——

(2) Office Copy Reproduction—$——

(3) Microfiche Reproduction—$——

(4) Cost of Printed Records—$——

Total of Other Costs: $——

(H) Other Operating Costs:

(1) Reporting Costs [1]

(2) Operational ——

(3) User ——

(4) Overhead ——

((1) + (2) × (overhead rate)) —— $——

[1] See DoD Instruction 5000.22 *(AR 37–30).* In the report for the last 4-month period (Sep-Dec) of each year, include the costs attributable to the Annual Report.

(5) Other Costs as directed or as can be reasonably ascertained. Itemize each expense category and costs: $——

(Subtotal a) × (subtotal b) $——

(I) Summary:

(1) Total Costs of Sections 1 through 4, above $——

(2) Amount Collected from Requesters this Reporting Period: Search —— Copy —— Total: $——

(3) No. of Requests Processed During this Reporting Period: Reportable Requests —— Appeals —— Total: ——

(2) A copy of DD Form 2086, "Record of Freedom of Information (FOI) Processing Costs," is at Appendix F.

(3) Format and instructions for the Triannual report are at Appendix G.

BILLING CODE 3710-08-M

FREEDOM OF INFORMATION PROCESSING COST REPORT
For use of this form, see AR 340-17; the proponent agency is TAGO.

REQUIREMENT CONTROL SYMBOL
DD-PA(TRA&A) 1365 (R1)

TO: *(Include ZIP Code)*	FROM: *(Include ZIP Code)*	REPORTING PERIOD FROM: _____ TO: _____

SECTION A – COST OF ROUTINE REQUESTS PROCESSED

	NUMBER		COST FACTOR PER REQUEST		TOTAL COST
REPORTABLE REQUESTS		X		=	

SECTION B – PERSONNEL COSTS *(CIVILIAN AND MILITARY)*

	TOTAL MANYEARS	COST
1. DIRECT COSTS OF PERSONNEL ASSIGNED FOI DUTIES BASED UPON ESTIMATED PAYROLL MANYEARS BY GRADES		

	COST
2. DIRECT COSTS FOR OTHER PERSONNEL INVOLVED IN PROCESSING REQUESTS NOT INCLUDED ABOVE BASED UPON ACCUMULATION OF TOTAL HOURLY DATA.	
a. SEARCH TIME	
b. CLASSIFICATION REVIEW AND EXCISING ACTION	
c. COORDINATION AND APPROVAL/DENIAL DECISION	
d. CORRESPONDENCE AND FORMS PREPARATION	
e. OTHER ACTIVITY	
TOTAL MANHOUR COSTS	

	SUBTOTAL 1		SUBTOTAL 2		OVERHEAD RATE		COST
3. APPLICATION OF OVERHEAD		+		X		=	

	TOTAL COST
TOTAL OF DIRECT PERSONNEL COSTS AND OVERHEAD	

SECTION C – OTHER CASE RELATED COSTS

	COST	TOTAL COST
4. COMPUTER		
5. OFFICE COPY REPRODUCTION		
6. MICROFICHE REPRODUCTION		
7. PRINTED RECORDS		
TOTAL OF OTHER COSTS		

SECTION D – OTHER OPERATING COSTS

	COST	TOTAL COST
8. REPORTING COSTS*		
a. OPERATIONAL		
b. USER		
c. OVERHEAD *(25% of 1 and 2)*		
TOTAL OF OTHER OPERATING COSTS		

	ITEMIZED COST	TOTAL COST
9. OTHER COSTS AS DIRECTED OR AS CAN BE REASONABLY ASCERTAINED		
INDIVIDUALLY ITEMIZED EXPENSE CATEGORY AND COST		
TOTAL OTHER OPERATING COSTS		

SECTION E – SUMMARY

	TOTAL COST
10. TOTAL OF OTHER OPERATING COSTS	

11. AMOUNT COLLECTED FROM REQUESTERS THIS REPORTING PERIOD		12. NUMBER OF REQUESTS PROCESSED AND COMPLETED DURING THIS REPORTING PERIOD	
SEARCH		REPORTABLE REQUESTS	
COPY		APPEALS	
TOTAL		TOTAL	

**In the report for the last 4-month period (September - December) of each year, include the costs attributable to the Annual Report.*

DA FORM 4835-R, APR 82 EDITION OF DEC 79 IS OBSOLETE.

BILLING CODE 3710-08-C

Subpart H—Education and Training

§ 518.23 Responsibility and purpose.

(a) *Responsibility.* The head of each DoD Component is responsible for the establishment of educational and training programs on the provisions and requirements of this Regulation. The educational program should be targeted toward all members of the DoD Component, developing a general understanding and appreciation of the DoD FOIA Program; whereas, the training programs should be focused toward those personnel who are involved in the day-to-day processing of FOI requests, developing a thorough understanding of the procedures outlined in this Regulation.

(b) *Purpose.* The purpose of the educational and training programs is to promote a positive attitude among DoD personnel and raise the level of understanding and appreciation of the DoD FOIA Program, thereby improving the interaction with members of the public and improving the public trust in the Department of Defense.

(c) *Scope and principles.* Each Component shall design its FOIA educational and training programs to fit the particular requirements of personnel dependent upon their degree of involvement in the implementation of this Regulation. The program should be designed to accomplish the following objectives:

(1) Familiarize personnel with the requirements of the FOIA and its implementation by this Regulation.

(2) Instruct personnel, who act in FOI matters, concerning the provisions of this Regulation, advising them of the legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information.

(3) Provide for the procedural and legal guidance and instruction, as may be required, in the discharge of the responsibilities of initial denial and appellate authorities.

(4) Advise personnel of the penalties for noncompliance with the FOIA.

(d) *Implementation.* To ensure uniformity of interpretation, all major educational and training programs concerning the implementation of this Regulation should be coordinated with the Director, Freedom of Information and Security Review, OASD (Public Affairs).

(e) *Uniformity of Legal Interpretation.* In accordance with DoD Directive 5400.7 the General Counsel of the Department of Defense shall ensure uniformity in the legal position and interpretation of the DoD FOIA Program. This AR provides procedures for contacting the DoD General Counsel where required.

Appendix A—Unified Commands—Processing Procedures for FOI Appeals

1. *General.*

a. In accordance with DoD Directive 5400.7 (reference (b)) and this Regulation, the Unified Commands are placed under the jurisdiction of the Office of the Secretary of Defense, instead of the administering Military Department, only for the purpose of administering the Freedom of Information (FOI) Program. This policy represents an exception to the policies in DoD Directive 5100.3 (reference (e)).

b. The policy change above authorizes and requires the Unified Commands to process FOI requests in accordance with DoD Directive 5400.7 (reference (b)) and to forward directly to the Office of the Assistant Secretary of Defense (Public Affairs) all correspondence associated with the appeal of an initial denial for information under the provisions of the Freedom of Information Act (FOIA).

2. *Processing Procedures.*

A request for a record under the FOIA may be denied only upon determination that:

(a) The record is subject to one or more of the exemptions set forth in Chapter III of this Regulation.

(b) The record cannot be found because it has not been described with sufficient particularity to enable a responsible authority to locate it with a reasonable amount of effort.

(c) The requester has unreasonably failed to comply with the procedural requirements imposed by this regulation.

3. *Responsibilities of Commands.* Unified Commanders in Chief shall:

(a) Designate the officials authorized to deny initial FOI requests for records.

(b) Designate an office as the point-of-contact for FOI matters.

(c) Refer FOI cases to the ASD(PA) for review and evaluation when the issues raised are of unusual significance, precedent setting, or otherwise require special attention or guidance.

(d) Consult with other OSD and DoD Components that may have a significant interest in the requested record prior to final determination. Coordination with agencies outside the Department of Defense, if required, is authorized.

(e) Coordinate proposed denials of records with the appropriate Unified Command's Offie of the Staff Judge Advocate.

(f) Answer any request for a record within 10 working days of receipt. The requester shall be notified that his request has been granted or denied. In unusual circumstances, such notification may state that additional time, not to exceed 10 working days, is required to make a determination.

(g) Provide to the ASD(PA) when the request for a record is denied in whole or in part, a copy of the response to the requester or his representative, and any internal memoranda that provide background information or rationale for the denial.

(h) State in the response that the decision to deny the release of the requested information, in whole or in part, may be appealed to the ASD(PA), The Pentagon, Washington, D.C. 20301.

(i) Upon request, submit to ASD(PA) a copy of the records that were denied. ASD(PA) shall make such requests when adjudicating appeals.

4. *Fees for FOI Requests.* The fees charged for requested records shall be in accordance with Chapter VI of this Regulation.

5. *Communications.* Excellent communication capabilities currently exist between the Office of the ASD(PA) and the Public Affairs Offices of the Unified Commands. This communication capability shall be used for FOI cases that are time sensitive.

6. *Reporting Requirements.* a. The Unified Commands shall submit to the ASD(PA) triannual reports and an annual report. The instructions for these two reports are outlined in Chapter VII of this Regulation.

b. The annual report shall be submitted in duplicate to the ASD(PA) not later than each February 1. This reporting requirement is assigned Report Control Symbol DD-PA(TRA&A) 1365.

c. The triannual reports for the periods January–April, May–August, September–December are required within 30 days after the close of the reporting period. The first report is due for the period May–August 1980, arriving at the Office of the ASD(PA) not later than September 30, 1980. This reporting requirement is assigned Report Control Symbol DD-PA (TRA&A) 1365.

Appendix B—Addressing FOIA Requests

1. *General.* a. The Department of Defense includes the Office of the Secretary of Defense and the Organization of the Joint Chiefs of Staff, the Military Departments, the Unified and Specified Commands, and such other agencies as the Secretary of Defense establishes to meet specific requirements.

b. The Department of Defense does not have a central repository for DoD records. FOI requests, therefore, should be addressed to the DoD Component that has custody of the record desired. In answering inquiries regarding FOI requests, DoD personnel shall assist requesters in determining the correct DoD Component to address their requests. If there is uncertainty as to the ownership of the record desired, the requester shall be referred to the DoD Component that is most likely to have the record.

2. *Listing of DoD Component Addresses for FOI Requests.* a. *Office of the Secretary of Defense/Organization of the Joint Chiefs of Staff.* This Component includes the Office of the Secretary of Defense, Office of the Deputy Secretary of Defense, Organization of the Joint Chiefs of Staff, Under Secretary of Defense for Policy, Under Secretary of Defense for Research and Engineering, Assistant Secretaries of Defense, General Counsel of the Department of Defense, Deputy Under Secretary of Defense (Policy Planning), Deputy Under Secretary of Defense (Policy Review), Assistant to the Secretary of Defense (Atomic Energy), Assistant to the Secretary of Defense (Legal Affairs), Director of Defense Advanced Research Project Agency, Director of Defense Audit Service, Director of Defense

Audiovisual Agency, Director of Defense Security Assistance Agency, Director of Net Assessment, Director of Office of Civilian Health and Medical Program of the Uniformed Services, Director of Office of Dependents Schools (including Overseas Schools), Deputy Advisor on NATO Affairs, Inspector General for Defense Intelligence, President of the Uniformed Services University of the Health Sciences, President of National Defense University (including the National War College and the Industrial College of the Armed Forces), Commandant of the Defense Systems Management College, Commandant of Armed Forces Staff College. All Freedom of Information requests concerning records of these activities should be sent to: Director, Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, Pentagon, Washington, D.C. 20301.

b. *Department of the Army.* Army records may be requested from those Army officials who are listed in 32 CFR 518.17. Send requests to HQDA (DAAG–AMR–S), Alexandria, VA 22331, for records of the Headquarters, U.S. Army, or if there is uncertainty as to which Army activity may have the records desired.

1. For current publications and records of DA field commands, installations, and organizations.

(a) Send the request to a specific office of the command, installation, or organization, as shown below:

Record categories and Specific official

(1) Finance and fiscal—Comptroller/Finance Officer.

(2) Legal—Staff Judge Advocate/Legal Officer.

(3) Intelligence and Security—Intelligence Officer.

(4) Military police—Provost Marshal.

(5) Military personnel—Adjutant/Administrative Officer.

(6) Civilian personnel—Civilian Personnel Officer.

(7) Medical—MEDDAC/MEDCEN Commander.

(8) Training and education—Operations and Training Officer.

(9) Communications—Signal Officer.

(10) Transportation—Transportation Officer.

(11) Research and Development—Research and Development Officer.

(12) Logistics—Quartermaster/Ordnance/Supply Officer.

(13) Facilities—Engineer.

(14) All other—Records Management Officer.

(b) More detailed listings of all record categories kept in DA offices are in the AR 340–18 series.

(c) If a requester cannot determine to whom to send a request for current records of a specific DA field command, installation, or organization, he or she may contact the installation or organization public affairs officer for help.

2. For Department of the Army publications.

(a) The Government Printing Office has many DA publications for sale. Send requests to: The Superintendent of Documents, Government Printing Office, Washington, DC 20402.

(b) There are about 1,000 Government publication depository libraries throughout the United States. These libraries have copies of many DA publications. A list of these libraries may be obtained from the Superintendent of Documents at the above address. Requesters should use these facilities.

(c) Send requests for current administrative, training, technical, and supply publications to the Commander, US Army AG Publications Center. The mailing address is 2800 Eastern Blvd., Baltimore, MD 21220; the commercial telephone number is (301) 962–7201.

3. For military personnel records. Send requests for military personnel records or information as follows:

(a) Army Reserve personnel not on active duty and retired personnel—Commander, US Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St. Louis, MO 63132, or (314) 263–7600.

(b) Former Army officer personnel discharged or deceased after 1 July 1917 and former Army enlisted personnel discharged or deceased after 1 November 1912—Director, National Personnel Records Center, GSA, 9700 Page Boulevard, St. Louis, MO 63132.

(c) Army personnel separated before the dates specified in b above—Director, Military Archives Division, Office of National Archives, NARS, GSA, Washington, DC 20408.

(d) Army National Guard personnel—Officers, Chief, National Guard Bureau; enlisted personnel, Adjutant General of the proper State.

(e) Active duty commissioned and warrant officer personnel—HQDA(DAPC–MSO) Alexandria, VA 22332, or (202) 325–9310; or active duty enlisted personnel—Commander, US Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, Indiana 46429, or (317) 542–3111.

4. Medical records. (a) Send requests for medical records of nonactive duty military personnel to the same addresses as requests for military personnel records.

(b) Send requests for medical records of military personnel on active duty to the medical treatment facility where the records are kept. If a requester does not know the proper facility he or she may request locator service per 3(e) above.

(c) Send requests for the medical records of civilian employees and all dependents to the medical treatment facility where kept. If the records have been retired, send requests to the Director, National Personnel Records Center, GSA, 111 Winnebago Street, St. Louis, MO 63118.

5. Legal records. (a) Submit requests involving records of trial by court-martial as follows:

(1) Requests for records of general courts-martial and those special courts-martial in which a bad conduct discharge has been approved by the convening authority. Send the request to the staff judge advocate of the command with jurisdiction over the case, if the case has not yet been forwarded for appellate review. Send requests for cases already forwarded for appellate review, including old cases, to the US Army Legal Service Agency, JALS–CC, Nassif Building, Falls Church, VA 22041 or (202) 756–1888).

(2) The records of special courts-martial that do not involve a bad conduct discharge. These records are kept for 10 years after completion of the case. Send requests as follows:

(a) For up to 3 years after completion of the case, to the staff judge advocate of the headquarters where the case was reviewed.

(b) From 3 to 10 years after completion of the case, to the National Personnel Records Center (Military Records), 9700 Page Boulevard, St. Louis, MO 63132.

(c) Over 10 years after completion of the case—after 10 years, the only evidence of a special court-martial conviction is the special court-martial order maintained in the person's permanent records. Requests for such orders must follow instructions in 3 above.

(3) The locally maintained records of summary courts-martial are retired 3 years after action of the supervisory authority. Until that time, send requests for such records to the staff judge advocate of the headquarters where the case was reviewed. After 10 years, the only evidence of a summary court-martial conviction is the summary court-martial order in the person's permanent records. Requests for such order must follow instructions in 3 above.

(a) Requests submitted under (b) (2) and (3) above will be processed by The Judge Advocate General (HQDA(DAJA–CL), WASH DC 20310). The telephone numbers are (202) 695–1891 and AUTOVON 225–1981.

(b) Send requests involving the administrative settlement of claims to the Chief, US Army Claims Service, Fort George G. Meade, MD 20755. (Telephone, (301) 677–7860 or AUTOVON 923–7860.)

(c) Send requests involving debarred or suspended contractors to HQDA(DAJA–ZC), WASH DC 20310. (Telephone, (202) 697–4769 or AUTOVON 227–4769.)

(d) Send other requests involving legal matters (other than requests for records kept by the staff judge advocate of a command, installation, or organization) to HQDA(DAJA–AL), WASH DC 20310. (Telephone, (202) 694–4316 or AUTOVON 224–4316.)

6. Civil Works program. Send requests involving civil works to the proper division or district office of the Corps of Engineers. This includes records relating to construction, operation, and maintenance for improvement of rivers, harbors, and waterways for navigation, flood control, and related purposes, including shore protection work by the Army. If the requester does not know the proper office, he or she may contact HQDA(DAEN–CCK), Pulaski Building, WASH DC 20314. (Telephone, (202) 272–0028.)

7. Civilian personnel records. Send requests for personnel records of current civilian employees to the employing installation. Send requests for personnel records of former civilian employees to the Director, National Personnel Records Center, GSA, 111 Winnebago Street, St. Louis, MO 63118.

8. Procurement matters. Send requests for information about procurement activities to the contracting officer concerned or, if not feasible, to the procuring activity. If the contracting officer or procuring activity is not known, send inquiries as to the proper location as follows:

(a) Concerning Army Material Development and Readiness Command procurement—Commander, US Army Material Development and Readiness Command, 5001 Eisenhower Avenue, Alexandria, VA 22333.

(b) Concerning Corps of Engineer procurement—HQDA(DAEN-CCK), Pulaski Building, WASH DC 20314. Telephone (202) 272-0028.

(c) Concerning all other procurement—HQDA(DAJA-KL), WASH DC 20310. (Telephone, (202) 695-6209 or AUTOVON 225-6209.)

9. Criminal investigation files. Send requests involving criminal investigation files to the Commander, US Army Criminal Investigation Command, ATTN: CIJA, 5611 Columbia Pike, Falls Church, VA 22041. (Telephone, (703) 756-2266.) Only the Commanding General, USACIDC, can release any CIDC originated criminal investigation file.

10. Personnel security investigation files. Send requests involving personnel security investigation files to the Commander, US Army Intelligence and Security Command, ATTN: LACSF-FI, Fort Meade, MD 20755.

11. Inspector General records. Send requests involving records within the Inspector General system to The Inspector General of the Army, ATTN: DAIG-ZXF, WASH DC 20310. AR 20-1 governs such records.

12. Army records in Government records depositories. (a) Noncurrent Army records are in the National Archives of the United States, WASH DC 20408, in Federal Records Centers of the General Services Administration, and in other records depositories. Requesters must write directly to the heads of these depositories for copies of such records.

(a) A list of pertinent records depositories is published in appendix A, AR 340-18-1.

c. *Department of the Navy.* Navy and Marine Corps records may be requested from any Navy or Marine Corps activity by addressing a letter to the commanding officer and clearly indicating that it is a FOI request. Send requests to Chief of Naval Records Management Division (OP-09B1), Room 5E-613, Pentagon, Washington, D.C. 20350, for records of the Headquarters, Department of the Navy, or if there is uncertainty as to which Navy or Marine Corps activity may have records sought.

d. *Department of the Air Force.* Air Force records may be requested from the Commander (Attention: DADF) of any Air Force installation, major command, or separate operating agency, or from the Headquarters, United States Air Force. Requesters should send FOI requests to HQ USAF/DADF, Washington, D.C. 20330, for Air Force records of Headquarters, United States Air Force, or if there is uncertainty as to which Air Force activity may have the records desired.

e. *Defense Communication Agency (DCA).* DCA records may be requested from any DCA field activity or from its headquarters. FOI requests may be addressed to Headquarters, Defense Communications Agency (Code 105), Washington, D.C. 20305.

f. *Defense Contract Audit Agency (DCAA).* DCAA records may be requested from any of its regional offices or from its headquarters. Requesters should send FOI requests to the Defense Contract Audit Agency, Cameron Station, Alexandria, Va 22314, for records of its headquarters or if there is uncertainty as to which DCAA region may have the records sought.

g. *Defense Intelligence Agency (DIA).* FOI requests for DIA records may be addressed to Defense Intelligence Agency (RTS-2A), Washington, D.C. 20301.

h. *Defense Investigative Service (DIS).* All FOI requests for DIS records should be sent to the Office of Information and Legal Affairs Defense Investigative Service (D0020), 1900 Half Street, S.W., Washington, D.C. 20314.

i. *Defense Logistics Agency (DLA).* DLA records may be requested from its headquarters or from any of its field activities. Requesters should send FOI requests to Defense Logistics Agency (DLA-XA), Cameron Station, Alexandria, Virginia 22314, for records of its headquarters of DLA field activities if the record is known to be at the field location.

j. *Defense Mapping Agency (DMA).* FOI requests for DMA records may be sent to the Defense Mapping Agency, Naval Observatory, Building 56, 34 Massachusetts Avenue, N.W., Washington, D.C. 20305.

k. *Defense Nuclear Agency (DNA).* FOI requests for DNA records may be sent to Defense Nuclear Agency, Public Affairs Office, Washington, D.C. 20305.

l. *National Security Agency (NSA).* FOI requests for NSA records may be sent to the National Security Agency, ATTN: Freedom of Information Office, Fort George G. Meade, MD 20755.

3. *Other Addresses.*

a. *Office of Civilian Health and Medical Program of the Uniformed Services (CHAMPUS).* FOI requests for CHAMPUS records may be sent to the Director, OCHAMPUS, Denver, Colorado 80240.

b. *National Guard Bureau.* FOI requests for National Guard Federal records may be sent to any State Guard unit or to the National Guard Bureau (NGB-DA), Room 2C-362, Pentagon, Washington, D.C. 20301.

c. *Miscellaneous.* If there is uncertainty as to which DoD Component may have the DoD record sought, the requester may address a Freedom of Information request to the Director, Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, Pentagon, Washington, D.C. 20301.

Appendix C.—Litigation Status Sheet

1. Case Number *
2. Requester
3. Document Title or Description
4. Litigation
   a. Date Complaint Filed
   b. Court
   c. Case File Number *
5. Defendants (agency and individual)
6. Remarks: (brief explanation of what the case is about)
7. Court Action
   a. Court's Finding
   b. Disciplinary Action (as appropriate)
8. Appeal (as appropriate)
   a. Date Complaint Filed
   b. Court
   c. Case File Number *
   d. Court's Finding
   e. Disciplinary Action (as appropriate)

* Number used by component for reference purposes.

Appendix D.—Annual Report Format

Item 1.—Initial Determinations Resulting in Not Providing All or a Portion of Record Requested

Total demands			Reasons
Reporting* activity	Completed public requests	Completed reportable requests	Statutory exemption + other = total

Item 2(a).—Exemptions Invoked on Initial Determinations

Reporting* activity	Exemption by number (552(b))									Total
	1	2	3	4	5	6	7	8	9	

Item 2(b).—Statutes Invoked on Initial Determinations

Reporting* activity	Statute	Number of times

Item 2(c)

Reporting* activity	Category*					Total
	1	2	3	4	5	

Item 3.—Initial Denial Officials by Participation

A. Total IDAs authorized: ——.

B. IDAs involved in adverse determinations.

Name*	Title	Number of instances of participation	
		Exemptions	Other

Item 4.—Number of Appeals and Results

Reporting* activity	Number of appeals			
	Granted	Granted in part	Denied	Total

Item 5(a).—Exemptions Invoked on Appeal Determinations

Reporting* activity	Exemptions by number (522(b))									Total
	1	2	3	4	5	6	7	8	9	

Item 5(b).—Statutes Invoked on Appeal Determinations

Reporting* activity	Statute	Number of times

Item 5(c).—Other Reasons Cited on Appeal Determinations

Reporting* activity	Category*					Total
	1	2	3	4	5	

Item 6.—Participation of Appellate Authorities (Those Responsible for Denials in Whole or in Part)

Name*	Title	Number of instances of participation	
		Exemptions	Other

Item 7.—Court Opinions and Action Taken

Item 8.—FOIA Implementation Rules or Regulations

Reporting* activity	Document identification	FR Reference

Item 10A.—Availability of Records (New Categories of Segregable Portions of Records Now Being Released)

Item 10C.—Time Limit Extensions by Activity

Reporting* activity	Location	I.—Unusual circumstances		II and III.—Court involvement	Total
		Volume	Consultation		

Item 10D.—Internal Memorandum (Including Directives Not Published in **Federal Register**)

Reporting* activity	Number of memoranda	Number available to public

Item 10E (Optional).—Other Information (Opinions) or Recommendations on Administering FOIA

Item 11.—FOIA Instructional and Educational Efforts

Note.—Items marked with an asterisk (*) have been registered in the DoD data element program.

Appendix E.—Other Reason Categories

1. *Transferred Requests.* This category applies when responsibility for making a determination or a decision on categories 2, 3, or 4 below is shifted from one DoD Component to another.

2. *Lack of Records.* This category covers those situations wherein the requester is advised the DoD Component has no record or has no statutory obligation to create a record.

3. *Failure of Requester to Reasonably Describe Record.* This category is specifically based on Section 552(a)(3)(a) of the FOIA.

4. *Other Failures by Requesters to Comply with Published Rules or Directives.* This category is based on Section 552(a)(3)(b) of the FOIA, and includes instances of failure to follow published rules concerning time, place, fees, and procedures.

5. *Request Withdrawn by Requester.* This category covers those situations wherein the requester asks an agency to disregard the request (or appeal) or pursues the request outside FOIA channels.

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APPENDIX F

RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST			SEE INSTRUCTIONS ON BACK OF PAGE
1. REQUEST NO.	2. TYPE OF REQUEST ☐ INITIAL ☐ APPEAL	3. DATE COMPLETED (yr., mo., day)	

4. CLERICAL HOURS (E-8/GS-8 AND BELOW)	TOTAL HOURS		HOURLY RATE		COST
SEARCH					*
REVIEW/EXCISING		X	$ 8.00	=	
CORRESPONDENCE AND FORMS PREPARATION					
OTHER ACTIVITY					

5. PROFESSIONAL HOURS	TOTAL HOURS		HOURLY RATE		COST
SEARCH					*
REVIEW/EXCISING		X	$ 16.00	=	
COORDINATION/APPROVAL/DENIAL					
OTHER ACTIVITY					

6. EXECUTIVE HOURS (O-1/GS-16 AND ABOVE)	TOTAL HOURS		HOURLY RATE		COST
REVIEW/EXCISING		X	$ 26.00	=	
COORDINATION/APPROVAL/DENIAL					

7. COMPUTER SEARCH	TOTAL HOURS		HOURLY RATE		COST
MACHINE HOURS		X		=	*

8. OFFICE COPY REPRODUCTION	NUMBER		RATE		COST
PAGES REPRODUCED		X	.10	=	*

9. MICROFICHE REPRODUCTION	NUMBER		RATE		COST
MICROFICHE REPRODUCED		X	.25	=	*

10. PRINTED RECORDS	TOTAL PAGES		RATE		COST
FORMS					*
PUBLICATIONS		X	.01	=	*
REPORTS					*

11. *For FOI Office Use Only*

a. SEARCH FEES PAID		e. TOTAL COLLECTABLE COSTS	*
b. COPY FEES PAID		f. TOTAL PROCESSING COSTS	
c. TOTAL PAID		g. TOTAL CHARGED	
d. DATE PAID (yr., mo., day)		h. FEES WAIVED/REDUCED	Y / N

* *Chargeable to the Requester*

DD FORM 1 JAN 80 2086-R

BILLING CODE 3710-08-C

Instructions

Purpose: This form is used to record costs associated with the processing of a Freedom of Information request.

1. Request Number—First two digits will express CY followed by dash (-) and Component's request number, i.e., 79-001.

*2. Type of Request—Check the appropriate block to indicate initial request or appeal of a denial.

*3. Date Completed—Enter year, month and day, i.e., 79/06/21.

*4. Clerical Hours—For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search—Time spent in locating from the files the requested information.

Review/Excising—Time spent reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered.

Correspondence & Forms Preparation—Time spent in preparing the necessary correspondence and forms to answer the request.

Other Activity—Time spent in activity other than above, such as, duplicating documents, hand carrying documents to other locations, restoring files, etc.

—Multiply the time in the total hours columns of each category by the hourly rate and enter the cost figures for each category. Only search cost may be charged to the requester. Further discussion of chargeable fees is found in Enclosure 6, DoD Directive 5400.7.

*5. Professional Hours—For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Review/Excising, and Other Activity—See explanation above.

Coordination/Approval/Denial—Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

—Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Only search cost may be charged to the requester.

*6. Executive Hours—For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Review/Excising and Coordination/Approval/Denial—See explanation above.

—Multiply the time in the total hours column in each category by the hourly rate and enter the cost figures for each category.

*7. Computer Search—Enter the time to the nearest 15 minutes in the total hours column.

—Multiply the total hours by the computer hourly rate and enter the cost figures. Computer search will be based on direct cost only of the Central Processing Unit, input/output devices, and memory capacity of the actual computer configuration used. This amount is fully chargeable to the requester.

*8. Office Copy Reproduction—Enter the number of pages reproduced.

—Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester.

*9. Microfiche Reproduction—Enter the number of microfiche copies reproduced.

—Multiply the rate per copy and enter cost figures. The entire cost is chargeable to the requester.

*10. Printed Records—Enter total pages in each category. The categories are:

Forms *(Include any type of printed forms)*

Publications *(Include any type of bound document, such as directives, regulations, studies, etc.)*

Reports *(Include any type of memorandum, staff action paper, etc.)*

—Multiply the total number of pages in each category by the rate per page and enter cost figures. The entire cost of each category is chargeable to the requester.

11. For FOI Office Use Only—

a. Search Fees Paid—Enter total search fees paid by the requester.

b. Copy Fees Paid—Enter the total of copy fees paid by the requester.

c. Total Paid—Add search fees paid and copy fees paid. Enter total in the total paid block.

**d.* Date Paid—Enter year, month and day, i.e., 79/10/24, the fee payment was received.

e. Total Collectable Costs—Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Only search, reproduction and printed records are chargeable to the requester.

f. Total Processing Costs—Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

g. Total Charged—Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

**h.* Fees Waived/Reduced—Indicate if the cost of processing the request was waived or reduced by placing an "X" in the "Y" block for Yes or an "X" in the "N" block for No.

Note.—All items marked with an asterisk (*) have been registered in the DoD Data Element Standardization Program (DoD Manual 5000.12M). Items 4, 5 and 6 were registered under data element "Type of FOI Manpower Category". The entries Search, Review/Excising, Correspondence & Forms Preparation, Coordination/Approval/Denial, and Other Activity have been registered under the data element "FOI Manpower Activity Category."

Appendix G.—Instructions for Triannual FOI Report

1. *General.* a. To accomplish FOI cost reporting, each reporting activity must, first, determine whether sufficient repetitive requests are available to develop an average cost factor for these requests; second, establish which employees devote a sufficient percentage of their time to FOI duties to calculate their involvement in manyears; third, accumulate data on time (manhours) and costs involved in each case processed; and fourth, keep track of operating costs of the FOI Program. DD Form 2086 (Appendix F) should be used to accumulate case data.

b. Only those requests processed under the FOI Act shall be costed and reported. The provision to the public of unclassified information, documents, and forms as part of normal service, in accordance with previously established criteria of the Privacy Act, is excluded from this reporting requirement.

2. *Section A.* Some reporting activities will find it economical to develop an average cost factor for processing repetitive routine requests rather than tracking costs on each request as it is processed. This section provides for that economy, but care must be exercised that costs are comprehensive, to include overhead, yet not duplicated elsewhere in the report.

3. *Section B.* a. Personnel costs are reported in two ways. Section B. (1) uses a manyear/wage type of costing by grade that relieves individuals primarily those involved in planning, program management, or administrative handling from accounting for their time by manhours.

SAMPLE COMPUTATION [1]

[Air Force]

Grade/step	Number	⅓ annual wage	Percent of time	Cost
0-4	1 ×	$7,697 ×	25	= $1,924
0-3	1 ×	6,459 ×	50	= 3,230
GS-9(5)	1 ×	4,844 ×	100	= 4,844
GS-4(3)	1 ×	2,701 ×	25(2)	= 1,350
Total			225	11,348

Man years = 225 ÷ 100 ÷ 3 = .75.

[1] (a) Military Grades—use DoD Accounting Guidance Handbook (DoD 7220.9-H, Sec. 252.

(b) Civilian Grades—use Office of Personnel Management Salary Table.

b. Use of one-third the annual wage and dividing manyears by three is required in this triannual report. Delete the computation.

c. Section B.(2) accounts for all other personnel involvement by manhours in particular activities associated in request processing as captured on DD Form 2086 (Appendix F). At the end of the reporting period, determine the total hourly data for each activity from all forms for the 4-month period and add totals into the five areas. It is suggested that hours and fractions thereof be added rather than dollar amounts. The use of standard fee schedule rates for each activity simplifies mathematical calculations and also allows these data to be compared to amounts collected. Executive manhours will likely be restricted to (2)(b) and (c) of Section B. (2).

Example computation:	
Clerical search hours	2071.75×$8.00=$16,574.00
Professional search hours	910.20×$16.00=$14,563.20
(1) Search time costs (total)	$31,137.20

d. Section B.(3) applies overhead to the direct manyear/manhour cost previously totaled above. The overhead rate includes the costs of supervision, space, and administrative support. Some reporting activities may have their own overhead rate (or will choose to develop one) based on cost experience. In the event that no such rate is available, an overhead rate of 25 percent may be used to produce an estimate of overhead costs. Include the rate used in the report.

4. *Section C.* Add the dollar amounts for each type of cost as recorded on DD Form 2086 (Appendix F) for the period and enter the total for each of these costs.

5. *Section D.* Use of this section recognizes reporting costs as part of total costs. It also provides for those other costs that are easily identifiable by each reporting activity. This section allows each DoD component, as well as other levels of command, to amplify reporting requirements for subordinate levels. Use can vary, but items such as per diem, operation of courier vehicles, training courses, printing (indexes and forms), and use of indicia apply.

6. *Section E.* The summary data provide a total best estimate cost figure for administering the FOI Program during the reporting period, a recap of fees collected, and the workload that generated these costs and collections.

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federal register

Monday
August 16, 1982

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Permanent Regulatory Program Modifications; Inspection and Enforcement; Civil Penalty Assessments

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 840, 842, 843 and 845

Permanent Regulatory Program Modifications; Inspection and Enforcement; Civil Penalty Assessments

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

ACTION: Final rules.

SUMMARY: The Office of Surface Mining (OSM) is revising the standards and procedures governing State and Federal inspection and enforcement, and civil penalty assessments.

These revisions are a result of the Secretary's review of all regulations promulgated by the Department under the Surface Mining Control and Reclamation Act of 1977 (the Act). The Secretary believes that, in order to remove burdensome or counter-productive requirements, fundamental changes to these rules are necessary.

These final rules provide for: (1) Aerial inspections to be recognized as partial inspections under the Act; (2) mail responses to requests for information which is in the possession of the regulatory authority; (3) a lesser frequency of inspections to be conducted at inactive surface coal mining operations; (4) joint inspections to be conducted by OSM and State personnel, where practical and where the State so requests; (5) a person requesting a Federal inspection (in a State where a State program is in force) to notify the State regulatory authority prior to, or simultaneously with, such request.

EFFECTIVE DATE: September 15, 1982.

FOR FURTHER INFORMATION CONTACT: Carl Pavetto, Chief, Branch of Inspection, Office of Surface Mining, Washington, D.C. 20240. Telephone: (202) 343-5384.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of the Interior has decided to review all regulations promulgated by the Department under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act). He intends to administer the Act in a manner which ensures the protection of society and the environment, but does not unnecessarily restrict coal development or improperly intrude upon the role of the States. This approach attempts to reconcile the potentially competing mandates of the Act, which require the Secretary to (1) establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining (Section 102(a)); (2) recognize that the primary governmental responsibility for developing, authorizing, issuing and enforcing regulations for surface coal mining and reclamation operations should rest with the States (Section 101(f)); and (3) ensure that coal supplies are adequate to meet the Nation's requirements (Section 102(f)).

To implement the provisions of Sections 501(b), 503 and 504 of the Act, the Secretary promulgated Parts 840, 842, 843 and 845 of Title 30, Code of Federal Regulations (CFR) (44 FR 15455–15463, March 13, 1979). Part 840 contains the minimum requirements for inspection and enforcement by a State where the State is the regulatory authority under an approved State program or cooperative agreement. Part 842 sets forth the procedures applicable to Federal inspections in the permanent regulatory program. Part 843 relates to Federal enforcement in the permanent regulatory program pursuant to Federal programs, the Federal lands program and any State program being enforced by OSM pursuant to sections 504(b) or 521(b) of the Act. Part 845 contains regulations regarding the assessment of civil penalties by OSM under section 518 of the Act.

In an effort to streamline the rules, remove burdensome or counter-productive requirements and provide editorial clarity, OSM proposed revisions to 30 CFR Parts 840, 842, 843 and 845 on December 1, 1981 (46 FR 58464). In the preamble to the proposed rules, OSM requested comments from all interested persons. Public hearings were held on January 13, 1982 in Denver, Colorado, Lexington, Kentucky and Washington, D.C. The public comment period ended on February 1, 1982. The rules adopted and responses to comments received are described below. As a matter of convenience to the reader, all of the provisions of 30 CFR Parts 840, 842, 843 and 845 are repromulgated, including the sections that are not being revised.

In a notice of intent published on April 21, 1982 (47 FR 17269), OSM announced that it had already made determinations regarding certain issues contained in the December 1, 1981 proposal, and would defer other issues raised by the proposal. Further details of the actions announced in the April 21, 1982 notice, together with responses to comments on those issues, are provided in this preamble.

In addition, OSM has: (1) Postponed action on a petition for rulemaking seeking to eliminate the requirement that States pay costs and expenses, including attorneys' fees, to persons who participate in proceedings under State programs; (2) decided not to adopt proposals which would have given States the option of denying to citizens the rights to bring suit in State courts and to accompany State inspectors on inspections which result from information provided by citizens; (3) deferred action on its proposal to eliminate its authority to issue notices of violation in oversight; (4) planned further study of alternatives to address the problems which result from the requirement that proposed penalties be paid into an escrow account prior to the granting of administrative review. OSM has modified other aspects of its December 1, 1981 proposal, as described herein.

Also, certain of the proposed changes contained in the December 1, 1981 proposal regarding citizens' participation were also addressed in a December 4, 1981 proposal (46 FR 59482) concerning State and Federal programs (30 CFR Chapter VII, Subchapter C). This preamble addresses the proposed changes regarding citizens' participation that were raised in the December 1 and December 4 proposals.

Rules Adopted and Disposition of Comments

Part 840—State Regulatory Authority Inspection and Enforcement

1. *Section 840.1 Scope.*

The only revision proposed for § 840.1, which contains the scope of Part 840, was to insert the word "approved" before the words "State program." This change is being adopted.

One commenter stated that inserting "approved" before the words "State program" was redundant because section 701(25) of the Act clearly defines "States program" as one that is approved under section 503 of the Act.

OSM disagrees. Section 701(25) of the Act does not use the term "approved" in defining "State programs." OSM added this term to clarify and emphasize that the State programs referred to in these regulations are those which the Secretary has approved.

Another commenter would revise this section to give only States the authority to regulate inspection and enforcement of coal exploration operations. OSM proposed no such change. However, this issue is discussed in the preamble to § 840.11, below.

2. *Section 840.11 Inspections by State Regulatory Authority.*

The changes to this section are being adopted by OSM as proposed, except as described in the responses to comments, below. Paragraph (a) has been revised to allow States to use aircraft in conducting the partial inspections required under section 517(c) of the Act. Paragraph (a) eliminates the previous requirement for an average of one partial inspection per month of inactive operations. States still must inspect inactive operations as necessary to ensure effective enforcement of their programs. *(See* discussion of this issue in the preamble to § 842.11(c).) As described below, new paragraph (f) defines active and inactive operations.

Standards and procedures governing aerial inspections are contained in Paragraph (d), which has been adopted as proposed with one addition (discussed below) to clarify that an on-site investigation of a potential violation observed during an aerial inspection will not be considered an additional partial or complete inspection. Paragraph (c), also adopted as proposed, alters the standards for frequency of inspections of coal exploration operations from "periodic" to "as necessary," in order to provide flexibility based on regional differences in the surface impacts of exploration activities.

The remaining revisions which were proposed for this section, and are adopted today, are essentially grammatical. No substantive change is intended. In paragraphs (a), (b) and (c), the language mandating collection of evidence during inspections is being deleted, since such language is superfluous. In paragraph (e) (former paragraph (d)), the cumbersome phrase "person being inspected" is replaced by the word "permittee." In paragraph (e)(3) (former paragraph (d)(3)), the phrase "the State program, the Act, this Chapter, the exploration approval and the permit" is replaced with "the approved State program." The change is being made for greater editorial precision and clarity.

Four commenters, while agreeing that partial inspections should include aerial inspections, stated that paragraph (a) should allow a State to inspect inactive mines less frequently than active mines, as OSM can do under § 842.11(c). These commenters wrote that the same policy considerations of efficiency in Federal programs apply to State programs. One commenter recommended that a specific inspection frequency for active and inactive mines be included in the rules.

OSM agrees with the first comment. The final rule allows States to distinguish between active and inactive mines in the same manner as was proposed and is being adopted for OSM when acting as the regulatory authority. This is accomplished through the changes in Paragraph (a) and new paragraph (f), discussed above. A discussion of the comments addressing the question of active and inactive mines is found below, under the discussion of § 842.11(c).

Three other commenters agreed that partial inspections should include aerial inspections, and two commenters stated that the rule should require notice of an aerial inspection where necessary to avoid blasting or other hazards.

OSM disagrees with the latter two commenters. Advance notice is impermissible when the regulatory authority intends to count an aerial inspection as one of the partial inspections mandated by the Act. Section 517(c)(2) of the Act requires that such inspections occur "without prior notice to the permittee or his agents or employees." OSM expects that the regulatory authority will be able to coordinate aerial inspections with the operator's announced blasting schedule, or take other steps short of advance warning, to ensure safety.

Two other commenters stated that, although aerial reconnaissance may be useful, it cannot be defined as a "partial inspection" under Section 517 of the Act. These commenters stated that section 517 and its legislative history contemplate on-site review, which is inconsistent with aerial inspections that do not allow inspection of required blasting records, seismic data, hydrologic monitoring information, and other vital records which must be monitored. One of these commenters recommended that, if OSM is determined to allow aerial inspections, aerial inspections should be limited to one per calendar quarter.

OSM does not believe that defining partial inspections to encompass aerial inspections is inconsistent with the Act. Aerial inspections are an effective and efficient means of monitoring an operator's compliance with certain parts of a regulatory program. In certain cases, an aerial inspection can disclose more in less time than would an on-site inspection. However, aerial inspections are inappropriate for determining compliance with some aspects of the State program (*e.g.*, water quality).

Access to records of blasting, discharges and similar matters, which are obviously not inspectable from the air, is accomplished by requiring the operator to make these records available to the regulatory authority, under regulations found throughout 30 CFR Chapter VII. With respect to other types of conditions which can be inspected only on site, OSM will expect States to conduct a sufficient number of on-site inspections to insure on an annual basis that the State's inspection cycle, as a whole, meets the requirements of section 517 of the Act. OSM will not, however, place a specific limit on the number of allowable aerial inspections, since the utility of aerial inspections, and consequently the appropriate mix of aerial and on-site partial inspections, will vary from State to State as a result of diverse geographic conditions.

One commenter stated that the requirement of § 840.11(d)(1) that aerial inspections ensure "the identification and documentation of conditions" is too general and does not specifically preclude use of a fixed-wing aircraft. Two other commenters stated that performance standards for aerial inspections should be provided.

OSM recognizes that regional variations both in terrain and in the characteristics of surface mining make fixed-wing aircraft more effective for aerial inspections in the West than in Appalachia. Consequently, the Office does not at present consider the use of fixed-wing aircraft for aerial inspections in Appalachia as reasonably ensuring the identification of on-the-ground conditions. However, OSM does not believe it would be appropriate to designate by regulation which aircraft should be used by the various States.

Four commenters objected to the deletion of the requirement that State and Federal inspectors "collect evidence of every violation" when conducting an inspection. They contended that the provision is required by sections 517 and 521 of the Act, and is necessary to determine if a State is adequately enforcing its program. One commenter, however, favored the deletion of the language mandating collection of evidence.

As OSM stated in the preamble to the proposed regulations (46 FR 58465), the deleted clause is superfluous and is subsumed by the requirement that a State adequately enforce its program, as reflected in § 840.11(e)(3) of these regulations.

One commenter would clarify that the regulatory authority has jurisdiction over unpermitted, as well as permitted, sites.

OSM does not believe that clarification is necessary. The definition of "permittee" contained in 30 CFR 701.5 makes it clear that a permittee is any person who holds, *or is required to hold,* a permit. See the discussion of this issue

in the preamble to the proposed rules (46 FR 58465).

One commenter stated that the number of *partial* inspections made during a year should be totaled to establish the "average" number of *complete* inspections per quarter required by this section, in order to avoid "duplicative" inspections and to conserve State resources.

OSM disagrees. Section 517(c) of the Act plainly requires four complete and eight partial inspections per year. Complete inspections are on-site reviews of a person's compliance with *all* permit conditions and requirements imposed under an approved State program, within the entire area disturbed or affected by the operations. Partial inspections, on the other hand, are either on-site or aerial reviews of a person's compliance with only some of the permit conditions and requirements imposed under the State program. There is no assurance that several partial inspections will encompass a review of all applicable performance standards. The complete and partial inspections do not, therefore, represent duplicative efforts. Thus several "partial" inspections will not, nor did the Act contemplate that they would, satisfy the requirement for "complete" inspections.

Another commenter would clarify that the inspections required under paragraph (b) cover affected areas outside the disturbed area.

OSM does not believe further changes to this section are necessary. Since paragraph (b) uses the words "entire area disturbed or affected," it is sufficiently clear that all areas, affected or disturbed, inside or outside of the permit area, are covered.

Three commenters stated that the requirement in paragraph (c) for inspection of coal exploration operations lacks any statutory basis. One of these commenters proposed regulatory language to give the State discretionary authority to regulate coal exploration operations which substantially disturb the natural land surface and which do not involve core drilling operations. Another commenter, however, supported the requirement for inspection of coal exploration operations, which the commenter saw as plainly covered by the requirements of sections 512 (a) and (c) of the Act.

OSM believes that inspection of coal exploration operations is clearly required under section 512 of the Act. Section 512(a) provides that these operations must be conducted in accordance with exploration regulations issued by the regulatory authority. In addition, section 512(c) provides that persons conducting illegal coal exploration activities shall be subject to the imposition of civil penalties under section 518 of the Act. In order to insure compliance of coal exploration operations with section 512 of the Act and corresponding regulations, and to determine when civil penalties are appropriate, the regulatory authority must inspect such operations. This requirement, together with the general grant of rulemaking authority in sections 201(c) and 501(b) of the Act, provides the basis for OSM's regulations addressing the inspection of coal exploration operations. The propriety of inspections of coal exploration sites was affirmed by the opinion of the United States District Court for the District of Columbia in *In Re: Permanent Surface Mining Regulation Litigation*, Civ. No. 79–1144, February 26, 1980.

Three commenters supported the change (in paragraph (c)) in the frequency of inspections at coal exploration operations from "periodic" to "as necessary," and five opposed the change. Those supporting the change agreed with OSM's statement in the preamble to the proposed rules (46 FR 58465) that it would allow regional flexibility in determining the appropriate frequency of coal exploration inspections. Those opposing the change stated that the phrase "as necessary" would not guarantee that any inspection of coal exploration operations will be conducted and that, under the previous rules, allowing the State to establish the frequency of periodic inspections already provided flexibility and also permitted effective oversight.

The Act does not specify that coal exploration operations be inspected on a periodic basis, as it does for surface coal mining and reclamation operations. Section 512(a) of the Act states only that coal exploration operations be conducted in accordance with regulations issued by the regulatory authority. OSM interprets this provision to mean that both OSM and States have broad discretion in formulating these regulations, including inspection measures. The promulgated regulation affords State regulatory authorities the flexibility to determine a frequency of inspections which reflects regional differences in the surface impacts of exploration activities.

One commenter supported the requirement in proposed paragraph (d)(2) for a mandatory on-site follow-up investigation within three days after the observation of any potential violation during an aerial inspection. This commenter stated that such prompt follow-up is necessary to ensure that violations will be cited and provable. Another commenter stated that allowing three days to cite the violation conflicts with the Act's requirement that every violation be cited immediately. On the other hand, two commenters stated that the on-site follow-up inspection should be done within three days only "where possible" because aerial inspections may detect numerous potential violations which could not be followed up within three days. Another commenter stated that it should be clarified that where an aerial inspection identifies a violation (as opposed to a potential violation), an on-site follow-up inspection is not necessary.

OSM believes that a three-day deadline for an on-site follow-up of an aerial inspection is appropriate, and has adopted the proposal. While on-site follow-up inspections should be performed promptly, OSM agrees that if numerous potential violations are detected at a number of locations, it may take as long as three days to conduct all required follow-up inspections. OSM also agrees that, when an aerial inspection clearly identifies a violation, an on-site follow-up inspection may not be necessary. In such a case, the regulatory authority should promptly issue a citation for the violation based on the aerial inspection. An on-site follow-up inspection is mandatory only when a potential violation which requires closer inspection is detected from the air.

One commenter stated that OSM should clarify that the on-site follow-up inspection required by paragraph (d)(2) should not count as a second inspection for purposes of the required "average" of not less than one partial inspection per month required under paragraph (a). This commenter reasoned that, since the aerial inspection in which potential violations are observed is ineffective without the on-the-ground follow-up, counting both of them would violate section 517(c) of the Act.

OSM agrees that an on-site follow-up inspection should not count as a separate partial inspection for the purpose of meeting the monthly average required under paragraph (a), and has modified paragraph (d) accordingly. OSM does not agree with the commenter's rationale, however. OSM believes that, rather than being ineffective, aerial inspections are simply incomplete until any potential violations observed from the air are confirmed by an on-site follow-up inspection.

Two commenters noted that the requirement in paragraph (e)(1) for access to the mine site on weekends and holidays is impracticable because a supervisor must accompany the

inspector and a supervisor may not always be available at those times.

OSM disagrees. Nothing in the Act or OSM's regulations requires that a mine supervisor accompany an inspector on an inspection.

One commenter opposed the change in paragraph (e)(2) from "person being inspected" to "permittee" because it would be ambiguous as to whether unpermitted operators are covered. A second commenter opposed paragraph (e)(2) as inconsistent with Congress' intent to prohibit the State from providing prior notice to the person being inspected. This second comment distinguished the rule of *Claypool Construction Company v. OSM* (1 IBSMA 259, September 26, 1979) (*see* discussion of this issue in the preamble to the proposed rules, 46 FR 58465, December 1, 1981), on the basis that the situations contemplated by this rule involve State programs, rather than OSM's regulations. The same commenter also opposed the proposal to use the phrase "approved State program" in paragraph (e)(3) because it does not cover certain terms and purposes of the Act which sections 503 and 517 require to be enforced.

OSM disagrees with these comments. The term "permittee" is defined in 30 CFR 700.5 to include persons who are required to have a permit as well as those who in fact have a permit. Thus, a person who fails to obtain a required permit is nevertheless a "permittee" under this definition. As for the question of prior notice, the language employed in paragraph (e) is essentially the same as that found in section 517(c)(2) of the Act, and clearly requires that prior notice is not to be given except for necessary on-site meetings with the permittee.

The phrase "approved State program" has been adopted in the rule. A State program approved by OSM in accordance with the Act encompasses all of the requirements, terms and purposes of the Act which a State is expected to enforce and carry out.

Another commenter stated that in paragraph (e)(3), which requires "prompt" filing of inspection reports adequate to "enforce" the State's program, OSM should delete "prompt" because it has no precise meaning, and substitute "meet" for "enforce" because inspection reports are filed to meet, not enforce, State program requirements.

OSM disagrees. The word "enforce" is appropriate because inspection reports are a part of enforcement necessary to ensure that the regulatory program's requirements are being carried out by the permittee. The word "enforce" is also used in section 517(c)(3) of the Act, which is the basis for paragraph (e)(3). The word "prompt," although not found in section 517(c), properly requires States to act expeditiously in filing inspection reports.

3. *Section 840.12 Right of Entry.*

OSM is promulgating this section as proposed. Paragraphs (a) and (b) will now require the State regulatory authority to "have authority," rather than "have statutory authority," to enter upon surface coal mining operations. OSM does not believe that a State statute necessarily provides the only basis for a right of entry. State programs may set forth other valid bases of such authority.

In paragraph (b), the phrase "the approved State program" replaces the former reference to "the Act, this Chapter, the State program, the exploration approval, or the permit." This change has been made throughout these rules; no substantive change is intended.

Four commenters stated that warrantless inspections are required and have been judicially upheld, and that OSM should require States to have statutory authority for such inspections. These commenters contended that reliance on State common law provides inadequate assurance that warrantless searches will be upheld by State courts in the future. Four other commenters wrote that a State should have discretion to require search warrants where its laws so provide because the Act does not require warrantless searches.

Although OSM agrees that the Act requires States to be able to conduct warrantless inspections, as discussed above, OSM does not believe that it is necessary to require that a State's authority to conduct warrantless inspections be based on statute. OSM will not disapprove a State program on the basis of speculation that a State court may not in the future uphold a State's authority to conduct warrantless inspections. In such an event, the State would have to modify its laws to provide for warrantless inspections or face termination of its program under Section 504 of the Act.

Two of these commenters also stated that § 840.12 should require an inspector to present his credentials to the person in charge of the operation at the time of an inspection.

OSM disagrees. It is OSM's policy, in the absence of extenuating circumstances, that its inspectors present their credentials to the person in charge at a site. (*See Consolidation Coal Co. v. Watt*, Civ. No. 80–3037, S.D. Ill., filed February 8, 1982. *See also* the discussion of this issue in the preamble to § 842.13, below.) If no such person is present, the inspectors should proceed to conduct their inspections. OSM expects States to follow this policy.

These same two commenters also stated that OSM should require that all inspectors be employees of the State or OSM. They stated that third-party contractors are not subject to the confidentiality and tort liability standards of State and Federal employees, and their use would violate the constitutional requirements that searches and inspections be conducted only by government agents.

OSM agrees that all inspectors must be duly authorized representatives of the appropriate governmental agency. OSM is not aware of any instance in which a State has proposed to have its inspections conducted by individuals other than State employees.

One commenter stated that OSM should require that duplication of records be paid for by the State regulatory authority because small company budgets could be seriously affected by unexpectedly large copying requests.

OSM disagrees. OSM has no authority to require States to pay for duplicating records which operators are required by law to submit. Of course, States have the option to provide this service if they so desire.

4. *Section 840.13 Enforcement Authority.*

The minor grammatical changes proposed for this section are being promulgated. An additional modification is also being made based on comments received, as discussed below.

Two commenters objected to the transfer of the reference to bonding (30 CFR Part 808) from paragraph (b) to paragraph (c). Both stated that State bond forfeiture sanctions must be consistent with those of the Federal government, as required by section 503(a)(2) of the Act.

The commenters are incorrect; there was no proposed transfer of the reference to Part 808 from paragraph (b) to paragraph (c). In both paragraphs, the references to 30 CFR Part 808 are replaced by reference to 30 CFR Subchapter J, which contains Part 808.

Two commenters suggested that OSM indicate that although State programs must have penalties as stringent as those provided by the Act, they may nevertheless differ in format from the Federal scheme.

OSM agrees. Judge Thomas Flannery held, in *In re: Permanent Surface Mining Regulation Litigation*, Civ. No. 79–1144, D.D.C., February 26, 1980 at p. 15, *on appeal* Civ. No. 80–1810 *et seq.*, D.C. Cir., that OSM has no authority to

require State programs to include a civil penalty scheme identical to OSM's.

In response to the decision, on August 4, 1980 (45 FR 51548) OSM suspended § 732.15(b)(7) and 840.13(a) insofar as both regulations required State programs to establish a point system for assessing civil penalties or to impose civil penalties as stringent as those appearing in 30 CFR 843.15. States must, however, apply the four criteria for civil penalties included in section 518(a) of the Act, and employ procedures which are the same as or similar to those contained in 30 CFR 845.17 through 845.20. States also must assess a penalty for all cessation orders, including a minimum of $750 per day for a cessation order issued for failure to abate a previously-cited violation (*see* section 518(h) of the Act). Generally, section 518(i) of the Act requires State programs to incorporate the penalties and procedures of section 518 of the Act.

Several commenters noted that paragraph (b) refers to § 843.19, which does not exist.

The reference to § 843.19 has been deleted.

5. *Section 840.14 Availability of Records.*

As described below, OSM has amended paragraph (c) to allow the mailing of responses to requests for information submitted by interested persons. This will assist States, principally in the West, which do not have offices throughout coal mining regions. Paragraph (b) limits the time during which records must be made immediately available to the public in the area of mining to five years after expiration of the period during which an operation is active or covered by any portion of a reclamation bond.

Three commenters stated that the proposal to allow mailing of records violates section 517(f) of the Act, which requires records to be "conveniently available" in "central and sufficient" locations. These commenters noted that, without a way to review the files, residents cannot intelligently request particular documents. One commenter stated that citizens should be able to obtain an index to records. Two commenters stated that the State should be able to charge for mailing and copying documents, except in cases of hardship.

OSM believes that allowing States the alternative of mailing records to persons who request them satisfies the requirement of section 517(f) of the Act that such records be made conveniently available to residents in the area of mining. Using the mailing method actually affords greater convenience to interested persons than does placing the records in an office. OSM agrees, however, that a description of the records available and how to obtain them by mail should be provided in each county so that interested persons may conveniently determine what is in fact available.

This requirement can be found in paragraph (c)(2). OSM does not believe that it would be proper for States to charge for copying and mailing services where the State exercises its option to mail documents, since this might inhibit persons from requesting documents which they are entitled to inspect.

One commenter stated that records should be available to the public only through Reclamation Phase II as defined in § 807.12(e), and not through the entire reclamation bond period, as was proposed. On the other hand, three commenters stated that there should be no limit on the public availability of records because such constraints could preclude access to records necessary to develop a pattern of non-enforcement under sections 525 or 521. These commenters contended that such data is also essential in the preparation of petitions filed under section 522 of the Act (to designate lands unsuitable for mining), and that microfiche and data-base search methods could mitigate concerns about cost and storage space.

OSM agrees in part. In response to these latter comments, paragraph (b) has been modified to require maintenance of these records for at least five years beyond the full release of the bond.

One commenter recommended deletion of paragraph (d) on the ground that "agreements" to limit public access to OSM-held documents violate section 517(f) of the Act and may conflict with OSM's procedures regarding discovery (43 CFR Part 4.1130 *et seq.*), which vest authority in the administrative law judge to determine procedures for handling information involved in administrative proceedings.

OSM disagrees with this comment. No change was proposed to be made to Paragraph (d). In addition, regulatory authorities routinely cooperate with each other concerning the handling of investigations and enforcement actions. This cooperation is not intended to abridge the provisions of section 517(f).

Comments were received which recommended that (1) OSM replace "immediately" with "reasonably" in paragraph (b); (2) OSM limit public availability of records to those which the operator is required to maintain, and not those which he or she maintains for his own purposes; (3) OSM change "county" in paragraph (c)(1) to "area" since some States do not have offices in each county; and (4) OSM should clarify that, where records are available at a county office, the State may charge for mailing and copying expenses.

OSM disagrees with these comments. It is implicit in the regulations that those records which are required to be publicly available are only those which the Act and these regulations require to be submitted. If an operator has records which are extraneous to the requirements and purposes of the Act and these regulations, the question of their public availability is up to the State regulatory authority. Offices where records must be made publicly available in the area of mining include public offices (such as courthouses) and are not limited to offices of the regulatory authority. In some States, however, it is conceivable that one area office may actually be at least as convenient to interested persons as would several county offices. OSM is willing to consider this alternative on a State-by-State basis, through the State program review process.

As for the word "immediately" contained in paragraph (d), section 517(f) of the Act allows for no lesser standard of availability.

Finally, nothing in § 840.14 would prohibit a State from imposing reasonable charges for mailing and copying of records which are publicly available for inspection at the appropriate county office.

Section 840.15 Public Participation

OSM proposed two changes to this section: State programs would not be required to (1) grant citizens the right to participate in inspections which result from citizens' requests; and (2) provide for citizen suits in State courts similar to the provision for citizens' suits found in Section 520 of the Act. Similar changes were proposed to § 732.15(b)(10) in the December 4, 1981 notice (*see Background*, above). After considering the issues raised by these proposals, together with the public comments, OSM has decided not to adopt these proposed changes. *See* Notice of Intent, 47 FR 17269 (April 21, 1982). OSM's reasons for this decision are given below, in its responses to the public comments received for these proposals.

On June 25, 1982 (see Proposed Rules, 47 FR 27699), OSM proposed § 773.17(d) and indicated it was proposing to delete the requirement in existing § 786.27(b)(2) that provides that private persons may accompany a State or Federal inspector when the inspection is in response to an alleged violation reported by that person.

Based on OSM's decision, the proposed deletion in § 786.27(b)(2) will not be made and the existing condition of permit issuance, that a private person reporting an alleged violation be allowed to accompany an inspector, will be retained.

In addition to proposing these two changes, OSM invited public comment on the question whether to grant the petition of the State of Colorado to amend OSM's interpretation of § 840.15. OSM presently requires State programs to provide for the award of appropriate costs and expenses, including attorneys' fees, consistent with 43 CFR 4.1294(b). In the same Notice of Intent referred to above, OSM announced that it is deferring a decision on the petition, and will respond to all comments in a later rulemaking.

The two proposed changes to this section concerning citizen participation generated more comments than any other aspect of the proposal. After reviewing the comments and the issues raised by the proposals, OSM has decided to retain without change § 840.15 and its preamble (44 FR 15297), and the citizens' rights provisions of § 732.15 and its preamble (44 FR 14965).

(a) Citizens' Right to Accompany Inspector.

Those opposing the proposal to eliminate the right of a citizen to accompany an inspector during an inspection resulting from information provided by that citizen stated that this right is contained in section 521(a)(1) of the Act, which pertains to Federal inspections, and section 521(d), which requires that State programs contain "the same or similar" procedural requirements relating to enforcement. These commenters stated that Congress provided, and Judge Flannery held, that citizen access is a proper condition for approval of a State program.

These commenters also stated that the proposal violates the purpose of section 102(i) of the Act to assure public participation in the enforcement of surface coal mining regulatory programs. Citizen participation in inspections reduces OSM's oversight burden and does not compromise the operator's ligitimate business interests. The commenters pointed out that citizens have contributed to the effectiveness of enforcement under the interim program, and that Congress certainly did not intend to return primary regulatory responsibility to the States without providing this safeguard.

Finally, these commenters stated that the proposal would add to the problem of State program credibility and strain the fragile relationship between industry and citizens on the local level.

Those supporting the proposal stated that section 521(a)(1) of the Act clearly restricts citizen accompaniment of inspectors to Federal inspections. These commenters stated that Congress' objective of assuring adequate citizen participation in enforcement proceedings is achieved through section 521(a)(1) of the Act, which creates a Federal oversight role in which the citizen is involved. Moreover, the proposal is consistent with Congress' judicially recognized desire to vest in the States primary regulatory and decisionmaking authority.

OSM has carefully examined the question of citizen access under State programs. OSM agrees with these commenters that section 521(a)(1) of the Act, considered alone, refers only to Federal inspections. However, when section 521(a)(1) is read in conjunction with section 521(d), it becomes evident that the citizen access provisions of section 521(a)(1) are also applicable to State programs. Section 521(d) requires that State programs include procedures which are the same as or similar to enforcement procedures contained in the Act. The citizen access provisions of section 521(a)(1) are included among such enforcement procedures. This was the express holding of Judge Flannery in *In Re: Permanent Surface Mining Regulation Litigation,* cited above.

For a discussion of the legislative history pertaining to public participation in enforcement, see the preamble to § 840.15 (44 FR 15297, March 13, 1979).

Two commenters who opposed the proposal recommended that OSM address industry concerns by (1) clarifying the operator's liability for any harm a citizen may suffer while on the site, (2) limiting a citizen's access to that area on the site related to the complaint, (3) limiting the number of persons who may accompany an inspector, and (4) providing reasonable protection against disclosure of confidential information.

OSM does not agree that § 840.15 should attempt to address these matters. As for the question of confidentiality, States may not classify as confidential any material submitted under the Act which is not permitted by Federal law to be held confidential. The question of operator liability for injuries a person may suffer while on a mine site is one to be decided under general principles of State tort law. OSM does agree that a State may not adopt a different standard of liability for citizens who accompany inspectors on inspections than for others. With respect to the other concerns expressed by these commenters, OSM does not intend to place specific limitations on State regulatory authorities. Since States have the primary responsibility for providing citizen access consistent with § 840.15, they may develop reasonable regulations on these matters, subject to OSM's program review authority.

(b) Citizen Suits in State Courts.

Those commenters opposing the proposal to eliminate the citizen suit provisions of section 520 of the Act as a requirement of State programs contended that these are enforcement provisions. It was asserted that those provisions are a requirement of State programs under section 521(d) of the Act and State programs must include similar provisions which are "no less stringent" than those contained in the Act. These commenters asserted that the proposal would thus violate the Act. The commenters added that the Senate report and floor debates list citizen suit provisions as a requirement of State programs.

OSM agrees that the legislative history of the Act indicates that Congress intended provisions for citizen suits in State courts to be a requirement of State programs. Representative Morris K. Udall, a primary sponsor of the Act, described State programs as including "enforcement, administrative and judicial review; public notice and hearing; citizen suits * * *" 123 Cong. Rec. 24422 (1977). Additional discussion of the legislative history pertaining to public participation in enforcement actions under the Act is set forth in the preamble to § 840.15 (44 FR 15297, March 13, 1979). OSM is therefore retaining the existing language and interpretation of § 840.15 in this respect. OSM believes that the commenters are mistaken, however, in their characterization of citizen suits as being enforcement provisions which, under section 521(d) of the Act, States must duplicate with "no less stringent" provisions. The "no less stringent" standard applies only to the sanctions called for under section 521. Citizen suits, under section 520, are enforcement *procedures* as Judge Flannery expressly held in *In Re: Permanent Surface Mining Regulation Litigation,* cited above. The standard which the Act requires and the court upheld as applicable to enforcement procedures, should be the "same or similar" standard contained in section 521(d). This standard will be employed by OSM in reviewing State programs on this subject.

Two commenters stated that eliminating citizens' recourse to State courts would undermine State primacy by forcing citizens to seek Federal review in routine enforcement matters. Thus there would be more suits filed in Federal courts, more requests for

Federal inspections pursuant to sections 517(h) and 521(a)(1) of the Act, and less direct interaction between citizens and State officials.

OSM agrees. One of OSM's primary goals in retaining the language and interpretation of § 840.15 is to encourage more direct interaction between interested persons and State officials. The public's concerns about the adequacy of State enforcement efforts should be resolved at the State level wherever possible. OSM is hopeful that this approach will result in less Federal enforcement and litigation.

Those supporting the proposal to eliminate citizens' recourse to State courts commented that section 520 of the Act, which creates the Federal citizen suit provision, make no mention that such a provision is a condition of State program approval. They contended that it merely creates Federal-court jurisdiction of a statutorily-created cause of action. Moreover, these commenters stated, the present rule unconstitutionally intrudes on the States' sovereign power by requiring States to expand the jurisdiction of their courts to entertain citizen suits.

OSM agrees that section 520 of the Act refers only to suits in Federal courts, and does not expressly require similar proceedings in State courts as a condition of State program approval. As explained above, however, the District Court held in *In Re: Permanent Surface Mining Regulation Litigation* (cited above), that citizen suits are enforcement procedures which, under section 521(d) of the Act, must be incorporated into State programs under the "same or similar" standard.

OSM does not agree that § 840.15 unconstitutionally intrudes on a State's sovereign power by requiring expansion of State court jurisdiction to include citizen suits against the regulatory authority. By establishing a comprehensive program to regulate surface coal mining operations, Congress has preempted this area of regulation. States may engage in this area of regulation, but they must do so in accordance with the conditions specified by Congress. A provision for citizens' suits in State courts, the same as or similar to that provided for in section 520 of the Act, is one such condition. If States desire to retain regulatory authority over surface coal mining operations, they must allow citizens' suits in their courts.

6. *Section 840.16 Compliance Conference.*

Proposed § 840.16 would authorize the inclusion in a State program of a provision for "compliance conferences," in an effort to provide guidance to surface coal mine operators in conforming planned activities to the requirements of the Act. OSM is promulgating new § 840.16 as proposed, with one modification concerning the manner and frequency of compliance conferences, discussed below.

Six commenters objected to compliance conferences, stating that they (1) would be an unwarranted subsidy of operators by providing free engineering advice that should be obtained in the private marketplace; (2) would drain OSM and State resources away from statutory responsibilities; (3) are unnecessary under the permanent program because any proposed practices will have been planned and approved by the regulatory authority; and (4) will be likely to lead to violations of section 521(a)(3) of the Act, since in practice no regulatory authority will cite a violation which it has discussed with an operator where the operator is taking some action to abate it. It was suggested that an operator could assert that a State is estopped from penalizing it for violations found during an inspection where such violations had been overlooked or expressly excused at a prior compliance conference. These commenters would have States ensure that a compliance conference (1) not constitute an inspection under Section 517 of the Act; (2) may be refused by the regulatory authority for any reason; (3) pertain only to prospective conditions; (4) be limited to one per year; and (5) not affect the amount of any assessment. Another commenter, while supporting the concept of compliance conferences, would delete this section because States are already using them and there are no problems which call for OSM regulation.

Twelve commenters generally supported compliance conferences, but most argued that the provisions should be made more flexible by (1) permitting them to cover existing conditions, as well as proposed practices and new mines, and (2) increasing or removing the allowable frequency of compliance conferences, because a particular operation may encounter unique or recurring technical problems which warrant multiple conferences.

Several commenters opposed limiting the use of compliance conferences to newly opened mines. OSM agrees and has not adopted regulations to limit compliance conferences to newly opened mines.

Several of these commenters also stated that the conferences would be most useful if they were conducted by technical personnel, rather than inspectors. They stated that, to be fair, an operator should be able to rely on the representations of technical personnel with regard to any condition reviewed at the conference. Four other commenters suggested that the State determine whether to use technical persons or inspectors. One commenter stated that the State must provide reasons for refusing to hold a conference in order to ensure equal treatment. Three other commenters argued that the State must be *required* to hold such conferences upon request, and another stated that the State should also be able to request compliance conferences.

OSM believes compliance conferences, if conducted within certain minimum guidelines, are not inconsistent with the terms and requirements of the Act, and can serve as a means to encourage and facilitate compliance with the regulatory program. OSM believes that compliance conferences should only address prospective activities; however, any violation observed must be cited. The compliance conference cannot affect the enforcement rights and obligations of the regulatory authority or the validity of any enforcement action taken, and are not considered as inspections required under § 840.11.

Beyond these basic guidelines, OSM agrees that the manner and frequency of compliance conferences are best left to the discretion of the regulatory authority. OSM plans to review the use of compliance conferences as part of the oversight process, and if abuses or problems develop, it will take appropriate action to correct them. The final rule has been modified to reflect this approach, by not adopting the proposed requirement that a maximum of one compliance conference be held in any six-month period.

7. *Section 842.11 Federal Inspections and Monitoring.*

Several changes are being adopted as proposed for § 842.11. Paragraph (a)(1) requires joint OSM—State regulatory authority inspections, where practical and where the State so requests. This change does not affect OSM's obligations under the Act to conduct inspections, with or without State inspectors. Paragraph (c) enables OSM to include aerial inspections within its schedule of partial inspections, as provided for State programs under 30 CFR 840.11, discussed above. Paragraphs (c) (1) and (2) allow OSM to establish different frequencies of inspection between active and inactive mine sites. This change is based on OSM's experience that inactive mine sites present fewer problems than active mines. Paragraph (c)(3) expressly limits regulatory jurisdiction over coal

exploration operations to those operations which substantially disturb the natural land surface, in accordance with section 512(a) of the Act. The remaining changes to this section are similar to the grammatical revisions adopted in 30 CFR 840.11, discussed above, and do not involve substantive changes.

Finally, one change is being made in paragraph (c)(2)(ii)(B) based on a comment, as discussed below.

One commenter proposed that § 842.11(a)(2) should be limited by including the phrase "when the Office is the regulatory authority" However, this proposal is outside the scope of this rulemaking. OSM agrees with the essence of the comment. OSM will conduct inspections as necessary to develop or enforce a Federal program or a Federal lands program. When there is a cooperative agreement for Federal lands with the State regulatory authority, inspections will be conducted as necessary and as stipulated in the cooperative agreement.

Several commenters opposed the provision for joint State and Federal inspections as violative of section 517 of the Act. They contended that this provision would impede Federal evaluation of a State's administration of its program, and exacerbate both State and Federal staffing problems with duplicative efforts. Two of these commenters stated that if the joint inspection concept is promulgated, it should be entirely discretionary with OSM, and should require that a specific percentage (such as 50–75%) of the oversight inspections be conducted only by OSM.

The several commenters who supported the proposal stated that joint inspections would lead to more accurate Federal evaluations of State enforcement because the State inspector could explain his actions and thereby eliminate misunderstandings.

OSM appreciates the concerns of those commenters who oppose joint inspections. However, the Act does not prohibit joint inspections. OSM notes that the provision for joint inspections "where practical" is intended to allow OSM to determine the extent to which joint inspections might hamper OSM's responsibility to conduct inspections "necessary to evaluate the administration of approved State programs," as required by section 517(a) of the Act. OSM will not conduct joint inspections where the State regulatory authority is necessary for effective oversight.

Several commenters stated that the distinction between active and inactive mines violates section 517(a) of the Act, which requires the regular inspection of "surface coal mining and reclamation operations," and section 517(c), which requires that the annual frequency of inspection be twelve partial and four complete inspections for each permitted surface coal mining operation. One of these commenters stated that inactive sites often require more, not less, scrutiny because sedimentation ponds are not regularly dredged, slides may develop, and water quality is not regularly monitored. At the very least, this commenter concluded, OSM should determine how many mines qualify as "inactive," and provide that the inactive status of any mine be denied or revoked if any outstanding violation exists or if two violations occur within any one year.

For the most part, OSM disagrees with these comments. In administering the Act and regulations, OSM has found that, in general, inactive mines present fewer problems than active mines, and consequently do not require the same frequency of inspections as active mines. Other than in situations involving temporary cessation of mining, reclamation on inactive mines will be in Phase III, which is the minimum five- or ten-year period of operator responsibility for vegetation. OSM believes that an average of one complete inspection per calendar quarter is sufficient during this period, and accordingly is promulgating § 842.11(c) as proposed. Monthly partial inspections will not be required for inactive mines; however, in cases where the nature of the site or the past history of compliance suggest that more frequent inspections are needed to enforce effectively the regulatory program, OSM will perform them. The rule has been modified to reflect this principle. OSM believes that this rule is reasonable and consistent with the Act.

Several commenters supported the distinction between active and inactive mines, but recommended that reference to the percentage of liability of the permittee relative to the performance bond for Reclamation Phase II (proposed paragraph(c)(2)(ii)(B)) be deleted. It was argued that tying less frequent inspections to actual reduction of liability may cause OSM to continue monthly inspections long after Phase II reclamation is completed.

OSM agrees. In view of the broad discretion granted to OSM in releasing a portion of the performance bond following completion of Reclamation Phases I and II, the determination of a mine's status as active or inactive should be based solely on the completion of Reclamation Phase II. Section 842.11(c)(2)(iii)(B) has been modified accordingly.

Another commenter would permit portions of active surface mining operations to be treated as inactive.

OSM agrees in part; to the extent that reclamation is being conducted in discrete increments, those portions of the permit area on which reclamation Phase II is complete may be treated as inactive for purposes of § 842.11.

One commenter would amend this section to include abandoned sites as inspectable units in Reclamation Phase III, since this phase occurs only after all mining has ceased.

OSM disagrees. The fact that a mine has been abandoned does not mean that it is in compliance or that there is no one against whom enforcement action can be taken. Thus a reduction in inspection frequency would be inappropriate.

One commenter stated that the phrase "to enfoce any requirement of the Act" should be restored to § 842.11(b)(1) to make the enforcement purpose explicit.

OSM disagrees. Since the bases and purposes of Federal inspections are set forth in paragraphs (b), (c) and (d) of § 842.11, the deleted language was superfluous.

Another commenter would substitute "alleged" for "possible" in § 842.11(b)(1)(ii)(B) because the word "possible" triggers OSM's inspection authority on too speculative a basis and the word "alleged" more clearly reflects section 521(a) of the Act.

OSM disagrees. OSM is required to conduct an inspection when it has "reason to believe" that a violation exists. The basis for such a belief may or may not involve an affirmative allegation. Moreover, considering the broad language of section 521(a) of the Act, OSM inspections are necessarily "speculative" until it is determined wheher or not a violation exists.

Another commenter stated that OSM must have probable cause to believe the informant's statements are true before acting under § 842.11(b), and must specify in greater detail what "appropriate action" the State must take to preclude Federal action.

OSM disagrees. Section 842.11(b)(1)(i) requires the Secretary's authorized representative to have "reason to believe on the basis of information available to him or her" that a violation exists. This language is found in section 521(a)(1) of the Act and does not require OSM to conduct an inquiry into the veracity of the complainant. OSM also disagrees with the suggestion that "appropriate action" should be spelled out in greater detail. The crucial response of a State is to take whatever

enforcement action is necessary to secure abatement of the violation.

Another commenter stated that the introductory paragraph to § 842.11(c) should replace "Part 733" with "to the extent required by § 733.12(f)" to clarify that Federal inspections will occur only when necessary for OSM to perform its duties under sections 504(b) and 521(b) of the Act.

OSM disagrees. Section 842.11(c) specifically provides that inspections under that Section shall be conducted when OSM is "* * * enforcing a State program, in whole or in part, pursuant to section 504(b) or section 521(b) of the Act and Part 733 of this chapter * * *" Part 733 establishes the procedures for substituting Federal enforcement of State programs or withdrawing approval of State programs under sections 504(b) and 521(b) of the Act, and thus is properly cited.

Finally, two commenters stated that OSM should specify which operations § 842.11(c)(3) "substantially" disturb the natural land surface sufficiently to give OSM jurisdiction.

OSM has proposed amendments to its coal exploration regulations (30 CFR Parts 772 and 815) and to the definitions (30 CFR 701.5) which will clarify the meaning of the term "substantially disturb." *See* 47 FR 21442, May 18 1982.

10. *Section 842.12 Citizens' Requests for Federal Inspections.*

The principal change proposed for § 842.12 was to require a person who requests a Federal inspection, pursuant to section 521(a)(1) of the Act, to initially contact the State regulatory authority (if any), and to notify OSM that the State regulatory authority failed to take appropriate action.

OSM has decided to adopt a modified version of its proposal. Under revised § 842.12(b), a person who requests a Federal inspection is required to notify the State regulatory authority in writing prior to, or simultaneously with, his or her request to OSM. However, the person is not required to wait for any action to be taken by the State regulatory authority before requesting a Federal inspection.

This change was made in response to the comments of four persons who opposed the proposal to require that a citizen seeking a Federal inspection initially contact the State, stating that it violates section 521(a) of the Act, which specifies that it is OSM's responsibility to notify the State, not the citizen's. These commenters noted that OSM has previously recognized (in the earlier preamble to the existing regulation) that there was no authority for such a requirement.

OSM believes that it is consistent with the Act to require persons to contact the State regulatory authority prior to, or simultaneously with, requesting a Federal inspection. OSM has been, and will continue to be, required to notify the State regulatory authority under the procedures of § 842.11(b)(1). However, imposition of this citizen notification requirement will enhance the protection of citizens by giving the State an earlier opportunity to act. Information from a person can be transmitted to a State regulatory authority quickly and accurately when a citizen communicates directly with the State. OSM believes that if citizens contact the State initially, most problems will be resolved satisfactorily without the need for intrusion by the Federal government.

If a Federal inspection is required in a particular instance, there need not be any delay caused by requiring the person to notify the State, because such notification can be made at the same time the person requests the Federal inspection.

Another commenter requested that OSM explain what "appropriate action" the State must fail to take before the citizen could request a Federal inspection.

What constitutes appropriate State action is not relevant to the revision adopted because the citizen is not required to wait for the failure of the State regulatory authority to take appropriate action, as was proposed.

Six commenters supported the citizen complaint proposal generally, and several argued that under section 517(h)(1) of the Act only a citizen who is or may be adversely affected may request a Federal inspection. One of these commenters would also delete the reference to "possible violations" from paragraph (b) to reduce the number of spurious complaints likely to arise. This same commenter would also change paragraph (d) to clarify that there is no authority for a Federal inspector to issue a notice of violation when a State program is in effect. Finally, one commenter recommended replacing the term "citizen" in this section with "person" to conform to the statute and eliminate uncertainty.

OSM disagrees with the suggestion to delete the reference to "possible violations" from paragraph (b). Such a change was not proposed and is beyond the scope of this rulemaking. Furthermore, the Act does not require that a person be certain that a violation exists, but only that he have "reason to believe" that one exists. The existing language, thus, reflects the intent of the Act, *i.e.*, that the Secretary inspect where the possibility of violations exists and that the identity of persons providing the information not be disclosed.

OSM will not require that a person requesting a Federal inspection under section 521(a)(1) of the Act be one who "is or may be adversely affected." One purpose of section 521(a)(1) is to bring information concerning possible violations to the attention of the regulatory authority, regardless of whether the source of that information has an affected interest. The question of whether OSM can issue notices of violation when a State program is in effect has been deferred, as will be discussed later in this preamble regarding proposed changes to 30 CFR 843.12(a)(2).

OSM agrees that, since section 521(a)(1) of the Act (which is the basis of this rule) uses the term "person," that term should be used in § 842.12.

11. *Section 842.13 Right of Entry.*

All of the changes proposed for § 842.13 are being adopted. Paragraph (a)(1) is simplified and makes it clear that an authorized representative of the Secretary has a right of entry under the Act onto coal exploration operations when conducting inspections pursuant to 30 CFR 842.11. Paragraph (a)(3) confirms the right of the authorized representative to gather evidence in order to document observed conditions, practices and violations.

One commenter would amend this section (and § 840.12) to require that all persons entering the mine site have proper training and equipment. Another commenter disagreed because, in the case of a citizen accompanying an inspector, safety concerns are satisified by the inspector's supervision.

OSM does not completely agree with either of these comments. OSM cannot insist that all persons accompanying a Federal inspector be trained, but it will expect such persons to wear any required safety equipment, and to adhere to any instructions which the OSM inspector may give.

Several commenters supported the creation in paragraph (a)(3) of a right to gather physical and photographic evidence, but one argued that there should be a duty, not just a right, to do so. Two other comments stated that the Act does not mention gathering physical or photographic evidence, and there is no need for the regulations to do so. OSM has promulgated the rule as proposed. The collection of specific evidence is properly left to the sound discretion of the Secretary's authorized representative.

Several commenters stated that the Act imposes upon the inspector the requirement to present appropriate credentials, not just the right of entry to the site as this section implies. Furthermore, this commenter contended, it should be clarified that access is required only to records required by the Act.

OSM agrees that, generally, the presentation of appropriate credentials is a necessary prerequisite for entry to a mine site and also for access to and copying of records, and inspection of monitoring equipment and methods of operation. However, the Act and OSM's regulations clearly contemplate circumstances under which the normal display of credentials prior to inspection might necessarily be postponed (*Consolidation Coal Co. v. Watt*, cited above). For instance, such circumstances would include situations where presentation of credentials would be tantamount to advance notice or where no one is present at the site.

Another commenter would modify paragraph (b) to require a search warrant where necessary under Federal law.

OSM disagrees. Search warrants are not legally required for access to mine sites, except where entry into buildings is otherwise denied by the permittee. *In Re: Surface Mining Regulation Litigation*, 456 F. Supp. 1301, 1317, (D.D.C. 1978). Section 842.13(b) conforms to this principle, and accordingly has not been modified.

12. *Section 824.14 Review of Adequacy and Completeness of Inspections.*

This section, which has been rephrased to eliminate redundancy, is being adopted as proposed; no change in effect is intended.

Two commenters objected to deleting the requirement that, where the Director finds that an adequate and complete inspection has not been made, remedial inspections will be ordered. They stated that this requirement was not redundant.

OSM disagrees with all of these comments. Regarding the deletion of language referring to "remedial inspections," OSM believes that 30 CFR 842.11 sufficiently spells out OSM's obligations to conduct adequate and complete inspections. It is redundant to reiterate this obligation in 30 CFR 842.14. If the Director or his or her designee finds that inspectors are not carrying out OSM's responsibilities under these rules, then the Director will take whatever steps are necessary to remedy the situation.

13. *Section 842.15 Review of Decision Not to Inspect or Enforce.*

New paragraph (d) is being promulgated as proposed with minor editorial changes. This paragraph provides that any determination made under this section constitutes a "Decision of OSM" within the scope of 43 CFR 4.1281, and shall contain a right of appeal to the Office of Hearings and Appeals in accordance with 43 CFR Part 4.

One commenter suggested editorial changes to paragraph (a) to track more closely the language of section 517(h)(1) of the Act, and two other commenters supported the appeal provisions of paragraph (d). One of these commenters stated that the final preamble should clarify that the right to appeal does not grant a permittee the right to appeal a decision to inspect.

OSM believes that the language of § 842.15 is sufficiently clear and in accordance with the Act so as to render further changes unnecessary. OSM agrees with the comment that a permittee does not have the right to appeal a decision to inspect its operations, since a decision to inspect or enforce does not in itself adversely affect a permittee; the permittee is protected, however, because if an enforcement action is taken during an inspection, the permittee will have appeal rights in respect to that action.

14. *Section 842.16 Availability of Records.*

OSM is adopting the changes proposed for this section, which were the same as those proposed for § 840.14. Additional modifications are being made as a result of comments received, and parallel those made to § 840.14.

Several commenters repeated here recommendations urged under § 840.14 to: (1) Allow public access only to records required to be kept; and (2) alter the mailing option provisions.

The discussion under § 840.14 of this preamble responds to these comments. In cases where OSM determines it would be more economical to mail copies of records on request (rather than place them in the county of mining) OSM will maintain a description of records in that county. The promulgated regulation is amended to reflect this approach. Other commenters stated that paragraph (a) should be revised to: (1) Replace the specific exceptions to availability of records with a general exception; (2) require an index of all documents that are withheld; and (3) clarify the phrase "active or as covered by any portion of a reclamation bond" so that records will remain available on illegal operations, abandoned operations, operations for which no bond was posted, and operations on which the bond was forfeited but reclamation never done.

OSM believes it is appropriate to refer to specific exceptions to the availability of records, as has been done in § 842.16(a). The references to specific exceptions serve to direct persons concerned with the question of availability of records to those exceptions which are likely to be the most relevant. OSM also disagrees that it is necessary to maintain an index of documents that are withheld. The specific exceptions to availability set forth in § 842.16(a) sufficiently apprise interested persons of the type of information being withheld. Finally, OSM believes that, for the purposes of § 842.16, the phrase "active or as covered by any portion of a reclamation bond" is sufficiently broad to cover any operation subject to the Act.

Part 843—Federal Enforcement

15. *Section 843.1 Scope.*

No substantive changes were proposed to this section; the reference to Part 845 has been removed as proposed because it was unnecessary.

Two commenters would remove the implication that OSM could enforce an entire State program only if a State program is *totally* inadequate. These commenters would add "any portions of" before the words "State programs." A third commenter stated that the reference to "the Federal lands program" should be limited to where OSM is acting as the regulatory authority.

OSM agrees with the first comment, and has clarified § 843.1 by adding the words "in whole or in part." OSM has the authority under sections 504(b) and 521(b) of the Act to enforce whatever parts of a State program are not being adequately enforced by a State. A State's refusal or inability to enforce a part of its program does not necessarily mean that State enforcement is totally inadequate. In fact, the State program may be quite adequate, but for various reasons the State may be failing to enforce some part of it. The Act specifically authorizes OSM to enforce any part of a State program when the State fails to do so. In such a case, OSM will enforce the State's program until the State satisfies the Secretary that it will enforce its program or the Secretary determines that a Federal program should be implemented in that State. With respect to Federal lands, OSM agrees that, where there is an approved State-Federal cooperative agreement established pursuant to 30 CFR Part 745, the State regulatory authority will enforce its program on Federal lands,

except as otherwise required by Federal law.

16. *Section 843.5 Definitions.*

This new section contains the definitions of "unwarranted failure to comply" and "willful violation" previously found in § 843.13. The definitions are unchanged.

One commenter would revise the definition of "significant, imminent environmental harm to land, air or water resources" found in § 701.5. The commenter stated that, since a cessation order is an extreme exercise of government power, the conditions under which such action may be taken should be more precise, understandable and restrained. The present definition, the commenter concluded, could be interpreted to apply to almost any activity related to removing coal or overburden, although Congress recognized that any surface mining operation disturbs the environment. Thus, the commenter suggested that, in determining significant harm, the regulatory authority must consider its intensity, long-lasting effect and geographic scope.

OSM cannot make the changes requested by the commenter in this rulemaking, since these definitions were not proposed to be changed. OSM appreciates the concerns expressed by this commenter and will consider them for possible inclusion in future rulemakings.

17. *Section 843.11 Cessation Orders.*

Paragraph (a)(2) of § 843.11, as proposed on December 1, 1981, was promulgated separately on April 29, 1982 (45 FR 18555). A summary of the public comments concerning this paragraph and OSM's responses to them are contained in that final rule. The remainder of § 843.11 is being promulgated at this time as proposed. OSM believes that these changes more closely reflect the provisions for cessation orders contained in section 521 of the Act.

Several commenters objected to deleting from proposed paragraph (a)(3) the requirement for use of "existing or additional personnel and equipment," because section 521(a)(2) of the Act requires OSM to "impose affirmative obligations on the operator requiring him to take whatever steps the Secretary deems necessary to abate the imminent danger or significant environmental harm."

OSM disagrees. OSM does not believe that it is ordinarily appropriate or desirable for it to specify the method of abatement, and thus is removing the language as proposed. It is generally preferable for OSM to state only what must be accomplished (including time limits), and allow the operator to determine the means of achieving abatement. Moreover, any limitations on a permittee's resources are no defense to a cessation order or notice of violation, since 30 CFR 843.18 expressly provides that inability to comply is no defense.

One commenter submitted editorial changes for paragraphs (a)(1), (a)(3), (b)(1), (b)(2), (c) and (f) to eliminate overbroad language and track the statute more closely.

OSM rejected these suggested changes. The present wording of these paragraphs is, in OSM's opinion, sufficiently specific and meets the intent of the Act.

Section 843.12 Notices of Violation

The principal change proposed for § 843.12 was to modify paragraph (a)(2), in order to raise the question of OSM's authority to issue a notice of violation to a permittee when a State with an approved program fails to take action to abate a violation. OSM has decided to study this question further in the context of the preparation of a supplemental Environmental Impact Statement. (*See* 47 FR 17269, April 21, 1982.) Pending a final decision on the matter, OSM is adopting Section 843.12 with all changes as proposed except the change in OSM's authority to issue notices of violation. OSM has issued a notice (47 FR 20631, May 13, 1982) providing the public an opportunity to comment further on the question of OSM's authority to issue notices of violation under § 843.12(a)(2) where a State program is in force.

Several comments were received on extended abatement periods in §§ 843.12(c) and 843.12(f). OSM proposed no change to these sections; therefore, they are outside the scope of this rulemaking. A discussion of the rationale supporting 30 CFR 843.12(c) and (f) is found in the preamble published at 46 FR 41702 (August 17, 1981).

Section 843.12(d), which has been adopted as proposed, removes the mandatory issuance of a cessation order to a permittee who fails to meet an interim abatement step imposed in a notice of violation. Instead, the issuance of a cessation order under these circumstances is discretionary with the authorized respresentative of the regulatory authority.

Four commenters supported proposed § 843.12(d). Others opposed it on the basis that failure to accomplish an interim step often means that timely abatement will not occur, and thus the interim step is "necessary to abate the violation in the most expeditious manner possible," as the Act requires. These latter commenters noted that flexibility already exists in setting interim steps in a notice of violation and in extending abatement periods for good cause.

OSM is promulgating this paragraph as proposed. The previous language, which mandated the issuance of a cessation order for failure to meet interim steps specified in a notice of violation, was inflexible and not required by section 521 of the Act. The change promulgated today provides flexibility to establish and enforce interim steps as the authorized representative deems appropriate.

Two commenters would require (under § 843.12(e)) OSM to reinspect an operation within 30 days after notice from the permittee that violations have been abated. It was urged that operators could be adversely affected by officially unresolved violations in their compliance histories, especially with respect to obtaining future permits.

OSM is not amending its rule to provide a specific time limitation for reinspection. OSM appreciates the concern of the commenters, but believes that its inspectors are able to monitor adequately the status of compliance at an operation, without the need for specific time limitations. Moreover, in most cases reinspection already occurs within 30 days.

19. *Section 843.13 Suspension or Revocation of Permits.*

OSM is adopting all of the proposed changes to 30 CFR § 843.13.

Section 843.13(a)(3) is revised to eliminate the mandatory determination by the Director that a pattern of violations exists if he finds that there were violations of the same or related requirements of the Act, regulatory program or permit during three or more Federal inspections of the permit area within any 12-month period. Under the revision if the Director finds such violations, he is required to review promptly the history of violations of the permittee, and make a determination of whether a pattern of violations exists. The key change is that the Director is given discretion in determining the existence of a pattern of violations.

Under previous § 843.13(b), once the Director determined that a pattern of violations existed, he could only vacate or decline to issue a show cause order based on a finding of demonstrable injustice. Because the Director's discretion in determining the existence of a pattern of violations encompasses a finding of demonstrable injustice, the previous § 843.13(b) has been removed and the succeeding paragraphs of the section have been redesignated

accordingly. The regulation continues to provide that, once a pattern of violations is found to exist, a show cause order must be issued.

Section 843.13(a)(4)(ii) was proposed to be revised to conform to section 521(a)(4) of the Act, which allows a determination of the existence of a pattern of violations to be based only on Federal inspections carried out (1) during enforcement of a Federal program or a Federal lands program; (2) during the interim program and before the applicable State program was approved under section 502 or 504 of the Act; or (3) during Federal enforcement of a State program in accordance with section 504(b) or 521(b) of the Act. Prior to its revision, § 843.13(a)(4)(ii) allowed the Director to consider violations issued as a result of inspections other than those enumerated above in determining the existence of a pattern of violations. Revised § 843.13(a)(4)(ii) makes clear that such other violations may be considered only as evidence of whether the pattern of violations was caused by the permittee willfully or through his unwarranted failure to comply, and may not be considered in determining the existence of the pattern itself.

Several commenters supported the proposal for essentially the same reasons stated in OSM's preamble. It was also stated that, because the previous mandatory language of paragraph (a)(3) would not allow the regulatory authority to examine extenuating circumstances, inspectors would be tempted to refrain from issuing a citation where the inspector felt the result would be too harsh.

Two commenters would revise proposed § 843.13(a)(2) to preclude a finding of a pattern of violations based on violations of different requirements. A third commenter also would delete this paragraph because it is unworkable and the Act provides protection via other provisions against operators who continually and willfully violate conditions of their permits or requirements of the Act.

OSM disagrees with all of these comments. OSM believes that, under appropriate circumstances, a number of violations of different requirements can support a finding of a pattern of violations. OSM has no evidence that § 843.13(a)(2) is "unworkable." OSM believes that it is a reasonable implementation of section 521(a)(4) of the Act.

Several commenters opposed the proposal to delete the requirement for mandatory show cause orders because it would weaken the show cause provision. One commenter noted that the proposal is unenforceable because there are no circumstances under which a show cause order must issue. That commenter also stated that the "issuance and vacation" problem of a show cause order known to be demonstrably unjust could be avoided by explicitly requiring the Director to find that a show cause order would not be demonstrably unjust under section 521 before determining that a pattern of violations exists. Another commenter stated that this section violates the mandate of section 521(a)(4) for notice and opportunity for hearing upon issuance of a show cause order.

OSM disagrees with all of these comments. The changes in §843.13 do not alter OSM's obligation to issue show cause orders for patterns of violation, but they do eliminate issuance of show cause orders under circumstances where such orders would be inappropriate. Nor do they violate section 521(a)(4)'s mandate for notice and opportunity for hearing, which is implemented in the redesignated § 843.13(b).

One commenter would delete paragraph (a)(4)(i)(B) because violations during an "unsettled" interim program should not lead to suspension or revocation of permanent program rights. Another commenter objected to the requirement in paragraph(c) (1) and (2) for reclamation after suspension or revocation of a permit because if the right to perform "surface coal mining operations" is suspended or revoked, so is the duty to reclaim.

OSM disagrees. Section 521(a)(4) of the Act expressly refers to violations of any requirement of the Act for the purpose of establishing a pattern of violations. This language encompasses the interim program

Regarding reclamation and abatement after the suspension or revocation of a permit, OSM believes that the operator continues to be legally responsible for these tasks. The permit issued under the Act is a permit to mine coal under specified conditions. Suspension of the right to mine does not suspend the obligation to reclaim under the Act. Reclamation and the abatement of violations are obligations of the permittee which must be satisfied even where cessation of its mining activities is the result of suspension or revocation of its permit.

20. *Section 843.14 Service of Notices of Violation, Cessation Orders, and Show Cause Orders.*

The changes proposed for this section were intended to eliminate unnecessary distinctions between notices of violation, cessation orders and show cause orders with respect to proper sevice. Other changes were also proposed to achieve greater clarity. This section has been promulgated as proposed.

Several commenters stated that the right to due process under the United States Constitution requires that cessation orders, notices of violation, and orders to show cause be served only on the permittee or its designated agent because other employees at the mine site do not have the authority to accept service of such documents. One commenter, however, supported the proposed service provisions as workable and functional.

OSM appreciates the concern of these commenters, but has decided not to modify this section beyond the changes that were proposed. Section 843.14(b) provides for designation of an agent for service, but service on the designated agent is optional. The Office does not have to serve the designated agent if, for instance, it has served the person in charge of the operation as provided in § 843.14(a)(1). The Office believes that the operator should be able to rely on its own employees and agents to inform it promptly of the issuance of citations. If requested, OSM would usually mail copies, as a courtesy, to a central office of the permittee. But OSM does not believe that the right to due process requires this.

21. *Section 843.15 Informal Public Hearing*

The minor grammatical changes proposed for this section are being adopted; no change in effect is intended. In addition, a change in paragraph (a), described below, is being made, on the basis of a commenter's suggestion.

Two commenters supported the proposal; another stated that the term "mining" used in paragraph (a) is improper under the statute.

OMS does not agree. The word "mining" is used in section 521(a)(5) of the Act, which is the basis for §843.15(a).

One commenter would amend paragraph (a) to allow an informal hearing even if a condition has been abated since the operator may nevertheless believe no violation occurred.

OSM disagrees. If an operator believes that it was incorrectly cited for a violation and wants to try to clear its record, the right of review referenced in paragraph (g) is adequate to accomplish this purpose.

22. *Section 843.19 Injunctive Relief.*

As proposed, this section has been deleted as superfluous. The Secretary's right to seek injunctive relief and the jurisdiction of the United States District

Courts to grant such relief are fixed by section 521(c) of the Act.

23. *Section 843.20 Compliance Conference.*

This new section is being promulgated as proposed, except as modified as a result of comments received. The modification of § 843.20 is the same, and was made for the same reasons, as the modification of § 840.16, summarized above. The comments on this Section were also identical to those received on § 840.16. The responses to these comments may be found in the preamble to that section.

Part 845—Civil Penalties

24. *Section 845.17 Procedures for Assessment of Civil Penalties.*

The proposed change to this section provided that OSM's failure to serve any proposed penalty assessment within 30 days after a citation is issued does not require vacation of the assessment, absent actual prejudice to, and objection by, the permittee. This proposal is being adopted.

Three commenters objected to the proposal stating that it violates the requirement of section 518(c) of the Act that OSM "shall inform the operator within 30 days of the proposed amount of (the) penalty." Three commenters supported the proposal because a showing of actual prejudice is important to ensure that inadvertent and non-prejudicial procedural delays do not result in vacation of otherwise proper penalties.

OSM believes that the 30-day-notice provision in section 518(c) of the Act is directory, and not mandatory. An operator should not escape the imposition of a civil penalty merely because the proposed assessment was not served within 30 days. In most such cases, the operator is not harmed by OSM's failure to serve the notice, since the operator is under no obligation to pay the penalty, or contest it, until the notice is served. *See Sahara Coal Co. v. OSM* (3 1BSMA 371 (1981)), in which the Interior Board of Surface Mining and Reclamation Appeals held, with respect to the corresponding provision in the interim regulatory program, that anyone desiring to interpose the failure to serve a proposed assessment within thirty days as a bar to an assessment must show actual prejudice.

25. *Section 845.18 Procedures for Assessment Conference.*

The change proposed for this section provided that OSM's failure to hold an assessment conference within 60 days after a request for a conference does not require vacation of the assessment, absent actual prejudice as a result of the delay. This proposal, which implements OSM's interpretation that 30 CFR 845.18(b) is directory rather than mandatory, is being adopted.

One commenter supported the changes, and another would revise paragraph (f) to permit statements of fact made by the parties at the conference to be admissible in any subsequent hearings.

OSM disagrees with the latter comment, and does not believe further changes to § 845.18 are warranted. Paragraph (f) was not deleted, because OSM desires to encourage informality and open and frank discussion at the assessment conference in order to facilitate a satisfactory settlement. The requested change would require that transcripts be made of conferences and would discourage candid discussions.

A third commenter recommended certain editorial changes, deletion of the second sentence in paragraph (b)(2) on the basis that it lacks statutory support, and deletion of the word "raise" in paragraph (b)(3)(ii) because the conference officer should not be able to second-guess a decision made by his office regarding the maximum amount of the penalty. This commenter would also delete paragraph (e) because it implies that the conference officer's only duties at the conference concern settlement, and paragraph (f) because it is unnecessary given well-recognized pleading and practice rules.

Another commenter would (1) increase the number of days within which an operator must request a conference; (2) delete from paragaph (b)(4) the requirement for approval of penalty changes greater than 25% or $500; and (3) clarify that the conference officer may attempt to settle and solicit payment.

One commenter stated that 30 days is the minimum reasonable time within which a permittee should be required to decide whether to contest a proposed penalty. Another commenter stated that 15 days (as presently provided) is sufficient since the permittee will already have had more than two months from the time the violation is cited to the time the conference decision is received.

OSM is retaining all of the language as proposed. Discussion of the issues surrounding informal public hearings is contained in the original preamble to 30 CFR 843.15, 44 FR 15304, (March 13, 1979).

26. *Section 845.19 Request for Hearing.*

In the preamble to the proposed regulations (46 FR 58468), OSM stated it was considering a provision for waiver of the penalty prepayment requirement of this section where prepayment would prevent the person charged with the penalty from continuing in business. OSM also stated that it was considering, as an alternative, an amendment to this section which would require prepayment by all permittees only with respect to proceedings which occur after an administrative law judge has determined that a penalty is lawfully due. The basis for both approaches was OSM's concern that rigid adherence to the present rule may violate constitutional due process requirements. OSM solicited public comments on this issue. After further study of the issue and the public comments received, OSM has decided to defer final rulemaking action on this subject. OSM will summarize and respond to all public comments in a subsequent rulemaking action.

27. *Miscellaneous Issues.*

Several commenters addressed parts of the rules for which OSM proposed no change. These comments are summarized below.

One commenter stated generally that OSM should not use civil penalties (Part 845) as a primary enforcement tool, but should reserve civil penalties for violations resulting in cessation orders and use the criminal system for most routine violations.

On the contrary, OSM has found that a mix of civil penalties and criminal sanctions results in the most effective enforcement.

One commenter would increase the State's flexibility in determining the amount of the penalty assessed (§ 845.13). Another commenter would relate the penalties more to the extent of the damage to health, including mandatory restitution of damages. A third commenter recommended that all four categories in the statute receive equal weight.

OSM knows of no authority for an administrative award of damages in restitution. As discussed above, OSM has amended § 840.13 of these rules to allow States greater flexibility in determining the amount of civil penalties. Nothing in the Act requires that equal weight be given to the four criteria set forth in section 518(a) of the Act.

One commenter asked OSM to identify the "base year" for the value of the dollars used in § 845.14, and how the dollars are to be adjusted for inflation.

There is no "base year" for the value of the dollars in the schedule contained in § 845.14. Civil penalties are to be paid when due in the amount determined by the regulatory authority. Amounts are not adjusted for inflation.

One commenter would change § 845.15(a) to (1) delete the last sentence

because it is burdensome and few violations are assigned more than 70 points; and (2) change "date of issuance" to "date of service" to be fair to the operator. Another commenter recommended that an operator be given 30 days, rather than 15, to pay the difference for an increased penalty (§ 824.20(d)).

Although OSM is sympathetic to the substance of these comments, implementation of the suggested rule changes would be beyond the scope of the proposal. OSM stated at 45 FR 58464 that it was "neither proposing substantive change to, nor soliciting comments on" several sections of Subchapter L, including those sections which are the subject of these comments. OSM will, however, consider making these suggestions a part of a later rulemaking action.

The current regulations will remain in effect pending the effective date of these rules.

Procedural Matters

E.O. 12291 and Regulatory Flexibility Act

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and does not require a small entity flexibility analysis under the Regulatory Flexibility Act.

National Environmental Policy Act

An environmental assessment (EA) of the cumulative impacts on the human environment of these rules has been prepared, together with a Finding of No Significant Impact (FONSI). These documents are on file in Room 5315, 1100 L Street, N.W., Washington, D.C., and were made publicly available for comment on May 3, 1982 (47 FR 18920). A final FONSI covering this rule was issued on July 2, 1982, and pertains to all the issues contained in this rulemaking, other than the issue of OSM's authority to issue notices of violation in oversight.

Paperwork Reduction Act

The information collection requirements contained in 30 CFR Parts 842 and 845 do not require approval by the Office of Management and Budget under 44 U.S.C. 3507, because there are fewer than 10 respondents.

The information collection requirements in existing 30 CFR Subchapter L were approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507. Those approvals were identified in "notes" at the introduction to 30 CFR Parts 840 and 843. OSM has deleted those "notes" and codified the OMB approvals under new §§ 840.10 and 843.10.

The information required by 30 CFR Part 840 will be used by States in assessing penalties, as evidence in enforcement cases and as an inspection management record. The information required by 30 CFR Part 843 is needed to ensure that violations can be corrected in a timely manner, to afford the operator an opportunity to respond to those violations, and to provide fairness in the enforcement process. The information required by 30 CFR Parts 840 and 843 is mandatory.

Drafting Information: These regulations were drafted by Murray Newton, Chief, Branch of Regulatory Programs, and Neil Stoloff, Enforcement Specialist, Branch of Inspection.

List of Subjects

30 CFR Part 840

Coal mining, Intergovernmental relations, Law enforcement, Reporting requirements, Surface mining, Underground mining;

30 CFR Part 842

Coal mining, Law enforcement, Surface mining, Underground mining;

30 CFR Part 843

Administrative practice and procedure, Coal mining, Law enforcement, Reporting requirements, Surface mining, Underground mining;

30 CFR Part 845

Administrative practice and procedure, Coal mining, Law enforcement, Penalties, Surface mining, Underground mining.

Accordingly, for the reasons contained in this preamble, 30 CFR Parts 840, 842, 843 and 845 are amended as set forth herein.

Dated: July 14, 1982.

William P. Pendley,

Deputy Assistant Secretary, Energy and Minerals.

Subchapter L of 30 CFR, consisting of Parts 840, 842, 843 and 845, is revised as follows:

SUBCHAPTER L—PERMANENT PROGRAM INSPECTION AND ENFORCEMENT PROCEDURES

PART 840—STATE REGULATORY AUTHORITY INSPECTION AND ENFORCEMENT

Sec.

840.1 Scope.
840.10 Information collection.
840.11 Inspections by State regulatory authority.
840.12 Right of entry.
840.13 Enforcement authority.
840.14 Availability of records.
840.15 Public participation.
840.16 Compliance conference.

Authority: Secs. 102, 201, 501(b), 503, 512, 517, 518, and 521 of Pub. L. 95–87, 91 Stat. 448, 449, 468, 470, 483, 498, 499 and 504 (30 U.S.C. 1202, 1211, 1251, 1253, 1262, 1267, 1268 and 1271).

§ 840.1 Scope.

This Part sets forth the minimum requirements for the Secretary's approval of the provisions for inspection and enforcement by a State of surface coal mining and reclamation operations and of coal exploration operations which substantially disturb the natural land surface, where a State is the regulatory authority under an approved State program.

§ 840.10 Information collection.

The information collection requirements contained in 30 CFR 840.11(e), 840.14(a) and 840.14(b) have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0051. The information is being collected by States for use in assessing penalties as evidence in enforcement cases and as an inspection management record. The obligation to respond is mandatory.

§ 840.11 Inspections by State regulatory authority.

(a) The State regulatory authority shall conduct an average of at least one partial inspection per month of each active surface coal mining and reclamation operation under its jurisdiction, and shall conduct such partial inspections of each inactive surface coal mining and reclamation operation under its jurisdiction as are necessary to ensure effective enforcement of the approved State program. A partial inspection is an on-site or aerial review of a person's compliance with some of the permit conditions and requirements imposed under an approved State program.

(b) The State regulatory authority shall conduct an average of at least one complete inspection per calendar quarter of each active or inactive surface coal mining and reclamation operation under its jurisdiction. A complete inspection is an on-site review of a person's compliance with all permit conditions and requirements imposed under the State program, within the entire area disturbed or affected by the surface coal mining and reclamation operations.

(c) The State regulatory authority shall conduct such inspections of coal explorations as are necessary to ensure

compliance with the approved State program.

(d)(1) Aerial inspections shall be conducted in a manner which reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected.

(2) Any potential violation observed during an aerial inspection shall be investigated on site within three days: provided, that any indication of a condition, practice or violation constituting cause for the issuance of a cessation order under section 521(a)(2) of the Act shall be investigated on site immediately, *and provided further,* that an on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of paragraphs (a) and (b) of this section.

(e) The inspections required under paragraphs (a), (b), (c) and (d) of this section shall:

(1) Be carried out on an irregular basis, so as to monitor compliance at all operations, including those which operate nights, weekends, or holidays;

(2) Occur without prior notice to the permittee or any agent or employee of such permittee, except for necessary on-site meetings; and

(3) Include the prompt filing of inspection reports adequate to enforce the requirements of the approved State program.

(f) For the purposes of this section, an inactive surface coal mining and reclamation operation is one for which:

(1) The State regulatory authority has secured from the permittee the written notice provided for under § 816.131(b) or § 817.131(b) of this chapter; or

(2) Reclamation Phase II as defined at § 807.12(e) of this chapter has been completed and the liability of the permittee has been reduced by the State regulatory authority in accordance with the State program.

§ 840.12 Right of entry.

(a) Within its jurisdiction, the State regulatory authority shall have authority that grants its representatives a right of entry to, upon, and through any coal exploration or surface coal mining and reclamation operation without advance notice upon presentation of appropriate credentials. No search warrant shall be required, except that a State may provide for its use with respect to entry into a building.

(b) The State regulatory authority shall have authority that authorizes its representatives to inspect any monitoring equipment or method of exploration or operation and to have access to and copy any records required under the approved State program. This authority shall provide that the representatives may exercise such rights at reasonable times, without advance notice, upon presentation of appropriate credentials. No search warrant shall be required, except that a State may provide for its use with respect to entry into a building.

§ 840.13 Enforcement authority.

(a) The civil and criminal penalty provisions of each State program shall contain penalties which are no less stringent than those set forth in section 518 of the Act and shall be consistent with 30 CFR Part 845.

(b) The enforcement provisions of each State program shall contain sanctions which are no less stringent than those set forth in section 521 of the Act and shall be consistent with §§ 843.11, 843.12, and 843.13, and Subchapters G and J of this chapter.

(c) The procedural requirements of each State program relating to the penalties and sanctions mentioned in paragraphs (a) and (b) of this section shall be the same as or similar to those provided in sections 518 and 521 of the Act, respectively, and consistent with Parts 843 and 845 and Subchapters G and J of this chapter.

(d) Nothing in the Act or this part shall be construed as eliminating any additional enforcement rights or procedures which are available under State law to a State regulatory authority, but which are not specifically enumerated in sections 518 and 521 of the Act.

§ 840.14 Availability of records.

(a) Each State regulatory authority shall make available to the Director, upon request, copies of all documents relating to applications for and approvals of existing, new, or revised coal exploration approvals or surface coal mining and reclamation operations permits and all documents relating to inspection and enforcment actions.

(b) Copies of all records, reports, inspection materials, or information obtained by the regulatory authority shall be made immediately available to the public in the area of mining until at least five years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond so that they are conveniently available to residents of that area, except—

(1) As otherwise provided by Federal law; and

(2) For information not required to be made available under §§ 776.17 and 786.15 of this chapter or paragraph (d) of this section.

(c) The State regulatory authority shall ensure compliance with Paragraph (b) by either:

(1) Making copies of all records, reports, inspection materials, and other subject information available for public inspection at a Federal, State or local government office in the county where the mining is occurring or proposed to occur; or,

(2) At the regulatory authority's option and expense, providing copies of subject information promptly by mail at the request of any resident of the area where the mining is occuring or is proposed to occur, *provided,* that the regulatory authority shall maintain for public inspection, at a Federal, State or local government office in the county where the mining is occurring or proposed to occur, a description of the information available for mailing and the procedure for obtaining such information.

(d) In order to protect preparation for hearings and enforcement proceedings, the Director and the State regulatory authority may enter into agreements regarding procedures for the special handling of investigative and enforcement reports and other such materials.

§ 840.15 Public participation.

Each State program shall provide for public participation in enforcement of the State program consistent with that provided by 30 CFR Parts 842, 843 and 845 and 43 CFR Part 4.

§ 840.16 Compliance conference.

(a) The State program may provide for compliance conferences between a permittee and an authorized representative of the regulatory authority as described in paragraph (b)—(e) of this section.

(b) A permittee may request an on-site compliance conference with an authorized representative of the regulatory authority to review the compliance status of any condition or practice proposed at any coal exploration or surface coal mining and reclamation operation. Any such conference shall not constitute an inspection within the meaning of section 517 of the Act and section 840.11.

(c) The State regulatory authority may accept or refuse any request to conduct a compliance conference under paragraph (b).

(d) The authorized representative at any compliance conference shall review such proposed conditions and practices in order to advise whether any such

condition or practice may become a violation of any requirement of the Act, the approved State program, or any applicable permit or exploration approval.

(e) Neither the holding of a compliance conference under this section nor any opinion given by the authorized representative at such a conference shall affect:

(1) Any rights or obligations of the regulatory authority or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such compliance conference; or

(2) The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

PART 842—FEDERAL INSPECTIONS AND MONITORING

Sec.

842.1 Scope.
842.11 Federal inspections and monitoring.
842.12 Requests for Federal inspections.
842.13 Right of entry.
842.14 Review of adequacy and completeness of inspections.
842.15 Review of decision not to inspect or enforce.
842.16 Availability of records.

Authority: Secs. 102, 201, 501(b), 504, 507, 512, 517, 518, 521, and 523 of Pub. L. 95-87, 91 Stat. 448, 449, 468, 471, 474, 483, 498, 499, 504, 510 (30 U.S.C. 1202, 1211, 1251, 1254, 1257, 1262, 1267, 1268, 1271, 1273).

§ 842.1 Scope.

This Part sets forth general procedures governing Federal inspections under the permanent regulatory program.

§ 842.11 Federal inspections and monitoring.

(a) Authorized representatives of the Secretary shall conduct inspections of surface coal mining and reclamation operations as necessary—

(1) To monitor and evaluate the administration of approved State programs. Such monitoring and evaluation inspections shall be conducted jointly with the State regulatory authority where practical and where the State so requests;

(2) To develop or enforce Federal programs and Federal lands programs;

(3) To enforce those requirements and permit conditions imposed under a State program not being enforced by a State, under section 504(b) or section 521(b) of the Act, Part 733 of this chapter, or as provided in this section; and

(4) To determine whether any notice of violation or cessation order issued during an inspection authorized under this section has been complied with.

(b)(1) An authorized representative of the Secretary shall immediately conduct a Federal inspection:

(i) When the authorized representative has reason to believe on the basis of information available to him or her (other than information resulting from a previous Federal inspection) that there exists a violation of the Act, this Chapter, the applicable program, or any condition of a permit or an exploration approval, or that there exists any condition, practice, or violation which creates an imminent danger to the health or safety of the public or is causing or could reasonably be expected to cause a significant, imminent environmental harm to land, air or water resources and—

(ii)(A) There is no State regulatory authority or the Office is enforcing the State program under section 504(b) or 521(b) of the Act and Part 733 of this chapter; or

(B) The authorized representative has notified the State regulatory authority of the possible violation and within 10 days after notification the State regulatory authority has failed to take appropriate action to have the violation abated and to inform the authorized representative that it has taken such action or has a valid reason for its inaction; or

(C) The person supplying the information supplies adequate proof that an imminent danger to the public health and safety or a significant, imminent environmental harm to land, air or water resources exists and that the State regulatory authority has failed to take appropriate action.

(2) An authorized representative shall have reason to believe that a violation, condition or practice exists if the facts alleged by the informant would, if true, constitute a condition, practice or violation referred to in paragraph (b)(1)(i) of this section.

(c) The Office, when acting as the regulatory authority under a Federal program or a Federal lands program and when enforcing a State program, in whole or in part, pursuant to section 504(b) of section 521(b) of the Act and Part 733 of this chapter, shall conduct inspections of all coal exploration and surface coal mining and reclamation operations under its jurisdiction. The Office shall—

(1) With respect to active surface coal mining and reclamation operations:

(i) Conduct an average of at least one partial inspection per month of each active surface coal mining and reclamation operation. A partial inspection is an on-site or aerial review of a person's compliance with some of the permit requirements and conditions imposed under an applicable program.

(A) Aerial inspections shall be conducted in a manner which reasonably ensures the identification and documentation of conditions at each surface coal mining and reclamation site inspected.

(B) Any potential violation observed during an aerial inspection shall be investigated on site within three calendar days: PROVIDED, that any indication of a condition, practice or violation constituting cause for issuance of a cessation order under section 521(a)(2) shall be investigated on site immediately, *and provided further*, that an on-site investigation of a potential violation observed during an aerial inspection shall not be considered to be an additional partial or complete inspection for the purposes of paragraphs (a) and (b) of this section.

(ii) Conduct an average of at least one complete inspection per calendar quarter of each active surface coal mining and reclamation operation. A complete inspection is an on-site review of a person's compliance with all permit conditions and requirements imposed under the applicable program within the entire area disturbed or affected by surface coal mining and reclamation operations.

(2) With respect to inactive surface coal mining and reclamation operations:

(i) Conduct an average of at least one complete inspection per calendar quarter of each inactive surface coal mining and reclamation operation; and

(ii) Conduct such partial inspections of each inactive surface coal mining and reclamation operation as are necessary to ensure effective enforcement of the regulatory program and the Act.

(iii) For purposes of this section, an inactive surface coal mining and reclamation operation is one for which—

(A) The Office has secured from the permittee the written notice provided for under §§ 816.131(b) or 817.131(b) of this chapter; or,

(B) Reclamation Phase II as defined at § 807.12(e) of this chapter has been completed.

(3) With respect to coal exploration operations, conduct such inspections as are necessary to ensure compliance with the Act by those coal explorations which substantially disturb the natural land surface.

(d) The inspections required under paragraphs (a), (b), and (c) of this section shall:

(1) Be carried out on an irregular basis, so as to monitor compliance at all

operations, including those which operate nights, weekends, or holidays;

(2) Occur without prior notice to the permittee or any agent or employee of such permittee, except for necessary on-site meetings; and

(3) Include the prompt filing of inspection reports adequate to enforce the requirements of the applicable program.

§ 842.12 Requests for Federal inspections.

(a) A person may request a Federal inspection under § 842.11(b) by furnishing to an authorized representative of the Secretary a signed, written statement (or an oral report followed by a signed, written statement) giving the authorized representative reason to believe that a violation, condition or practice referred to in § 842.11(b)(1)(i) exists and that the State regulatory authority, if any, has been notified, in writing, of the existence of the violation, condition or practice. The statement shall set forth a phone number and address where the person can be contacted.

(b) The identity of any person supplying information to the Office relating to a possible violation or imminent danger or harm shall remain confidential with the Office, if requested by that person, unless that person elects to accompany the inspector on the inspection, or unless disclosure is required under the Freedom of Information Act (5 U.S.C. section 552) or other Federal law.

(c) If a Federal inspection is conducted as a result of information provided to the Office by a person as described in paragraph (a) of this Section, the person shall be notified as far in advance as practicable when the inspection is to occur and shall be allowed to accompany the authorized representative of the Secretary during the inspection. Such person has a right of entry to, upon and through the coal exploration or surface coal mining and reclamation operation about which he or she supplied information, but only if he or she is in the presence of and is under the control, direction and supervision of the authorized representative while on the mine property. Such right of entry does not include a right to enter buildings without consent of the person in control of the building or without a search warrant.

(d) Within ten days of the Federal inspection or, if there is no Federal inspection, within 15 days of receipt of the person's written statement, the Office shall send the person the following.

(1) If a Federal inspection was made, a description of the enforcement action taken, which may consist of copies of the Federal inspection report and all notices of violation and cessation orders issued as a result of the inspection, or an explanation of why no enforcement action was taken;

(2) If no Federal inspection was conducted, an explanation of the reason why; and

(3) An explanation of the person's right, if any, to informal review of the action or inaction of the Office under § 842.15.

(e) The Office shall give copies of all materials in paragraphs (d)(1) and (d)(2) of this section within the time limits specified in those paragraphs to the person alleged to be in violation, except that the name of the person supplying information shall be removed unless disclosure of his or her identity is permitted under paragraph (b) of this section.

§ 842.13 Right of entry.

(a) Each authorized representative of the Secretary conducting a Federal inspection under § 842.11:

(1) Shall have a right of entry to, upon, and through any coal exploration or surface coal mining and reclamation operation without advance notice or a search warrant, upon presentation of appropriate credentials;

(2) May, at reasonable times and without delay, have access to and copy any records, and inspect any monitoring equipment or method of exploration or operation required under the applicable program; and,

(3) Shall have a right to gather physical and photographic evidence to document conditions, practices or violations at the site.

(b) No search warrant shall be required with respect to any activity under paragraph (a) of this section, except that a search warrant may be required for entry into a building.

§ 842.14 Review of adequacy and completeness of inspections.

Any person who is or may be adversely affected by a surface coal mining and reclamation operation or a coal exploration operation may notify the Director or his or her designee in writing of any alleged failure on the part of the Office to make adequate and complete or periodic Federal inspections. The notification shall include sufficient information to create a reasonable belief that the regulations of this part are not being complied with and to demonstrate that the person is or may be adversely affected. The Director or his or her designee shall within 15 days of receipt of the notification determine whether adequate and complete or periodic inspections have been made. The Director or his or her designee shall furnish the complainant with a written statement of the reasons for such determination and the actions, if any, taken to remedy the noncompliance.

§ 842.15 Review of decision not to inspect or enforce.

(a) Any person who is or may be adversely affected by a coal exploration or surface coal mining and reclamation operation may ask the Director or his or her designee to review informally an authorized representative's decision not to inspect or take appropriate enforcement action with respect to any violation alleged by that person in a request for Federal inspection under § 842.12. The request for review shall be in writing and include a statement of how the person is or may be adversely affected and why the decision merits review.

(b) The Director or his or her designee shall conduct the review and inform the person, in writing, of the results of the review within 30 days of his or her receipt of the request. The person alleged to be in violation shall also be given a copy of the results of the review, except that the name of the person who is or may be adversely affected shall not be disclosed unless confidentiality has been waived or disclosure is required under the Freedom of Information Act or other Federal law.

(c) Informal review under this Section shall not affect any right to formal review under section 525 of the Act or to a citizen's suit under Section 520 of the Act.

(d) Any determination made under paragraph (b) of this section shall constitute a decision of OSM within the meaning of 43 CFR 4.1281 and shall contain a right of appeal to the Office of Hearings and Appeals in accordance with 43 CFR Part 4.

§ 842.16 Availability of records.

(a) Copies of all records, reports, inspection materials, or information obtained by the Office under Title V of the Act, this chapter, a Federal program or Federal lands program, and a State program being enforced by the Office under section 504(b) or 521(b) of the Act and Part 733 of this chapter or §§ 842.11 or 842.12 shall be made immediately available to the public in the area of mining until at least five years after expiration of the period during which the subject operation is active or is covered by any portion of a reclamation bond so that they are conveniently

available to residents of that area, except—

(1) As otherwise provided by Federal law; and

(2) For information not required to be made available under §§ 776.17, 786.15, or 840.14(d) of this chapter.

(b) The Office shall ensure compliance with paragraph (a) of this section by either:

(1) Making copies of all such records, reports, inspection materials, and other information available for public inspection at a Federal, State or local government office in the county where the mining is occurring or is proposed to occur; or

(2) At the Office's option and expense, providing copies of such information promptly by mail at the request of any resident of the area where the mining is occurring or is proposed to occur, provided that the Office shall maintain for public inspection at a Federal, State, or local government office in the county where the mining is occurring or is proposed to occur a description of the information available for mailing and the procedure for obtaining such information.

(c) Copies of documents and information required to be made available under paragraph (a) of this section shall be provided to the State regulatory authority, if any.

PART 843—FEDERAL ENFORCEMENT

Sec.

843.1 Scope.
843.5 Definitions.
843.10 Information collection.
843.11 Cessation orders.
843.12 Notices of violation.
843.13 Suspension or revocation of permits.
843.14 Service of notices of violation, cessation orders, and show cause orders.
843.15 Informal public hearing.
843.16 Formal review of citations.
843.17 Failure to give notice and lack of information.
843.18 Inability to comply.
843.20 Compliance conference.

Authority: Secs. 102, 201, 501(b), 503, 504, 510, 517, 518, 520, 521, 523, 526 and 701 of Pub. L. 95–87, 91 Stat. 448, 449, 468, 470, 471, 480, 498, 499, 504, 510, 511 and 516 (30 U.S.C. 1202, 1211, 1251, 1253, 1254, 1260, 1267, 1268, 1271, 1273, 1275 and 1291).

§ 843.1 Scope.

This Part sets forth general rules regarding enforcement by the Office of the Act, this chapter, any Federal program, the Federal lands program, State programs being enforced by the Office in whole or in part under section 504(b) or 521(b) of the Act and Part 733 of this chapter and (in limited circumstances) under §§ 842.11 or 842.12 of this chapter, and all conditions of permits and coal exploration approvals or permits imposed under any of these programs, the Act, or this chapter.

§ 843.5 Definitions.

As used in this Part, the following terms have the specified meanings:

Unwarranted failure to comply means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit of the Act due to indifference, lack of diligence, or lack of reasonable care.

Willful violation means an act or omission which violates the Act, this chapter, the applicable program, or any permit condition required by the Act, this chapter, or the applicable program, committed by a person who intends the result which actually occurs.

§ 843.10 Information collection.

The information collection requirements contained in §843.14(c) and 843.16 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned clearance number 1029–0052. The information is needed to ensure that violations can be corrected in a timely manner, to afford the operator an opportunity to respond to those violations, and to provide fairness in the enforcement process. The obligation to respond is mandatory.

§ 843.11 Cessation orders.

(a)(1) An authorized representative of the Secretary shall immediately order a cessation of surface coal mining and reclamation operations or of the relevant portion thereof, if he or she finds, on the basis of any Federal inspection, any condition or practice, or any violation of the Act, this chapter, any applicable program, or any condition of an exploration approval or permit imposed under any such program, the Act, or this chapter which:

(i) Creates an imminent danger to the health or safety of the public; or

(ii) Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(2) Surface coal mining and reclamation operations conducted by any person without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources, unless such operations:

(i) Are an integral, uninterrupted extension of previously permitted operations, and the person conducting such operations has filed a timely and complete application for a permit to conduct such operations; or

(ii) Were conducted lawfully without a permit under the interim regulatory program because no permit has been required for such operations by the State in which the operations were conducted.

(3) If the cessation ordered under paragraph (a)(1) of this section will not completely abate the imminent danger or harm in the most expeditious manner physically possible, the authorized representative of the Secretary shall impose affirmative obligations on the permittee to abate the imminent danger or significant environmental harm. The order shall specify the time by which abatement shall be accomplished.

(b)(1) When a notice of violation has been issued under § 843.12(a) and the permittee fails to abate the violation within the abatement period fixed or subsequently extended by the authorized representative, the authorized representative of the Secretary shall immediately order a cessation of coal exploration or surface coal mining and reclamation operations, or of the portion relevant to the violation.

(2) A cessation order issued under this paragraph (b) shall require the permittee to take all steps the authorized representative of the Secretary deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

(c) A cessation order issued under paragraphs (a) or (b) of this section shall be in writing, signed by the authorized representative who issues it, and shall set forth with reasonable specificity: (1) The nature of the condition, practice or violation; (2) the remedial action or affirmative obligation required, if any, including interim steps, if appropriate; (3) the time established for abatement, if appropriate; and (4) a reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies. The order shall remain in effect until the condition, practice or violation resulting in the issuance of the cessation order has been abated or until vacated, modified or terminated in writing by an authorized representative of the Secretary, or until the order expires pursuant to section 521(a)(5) of the Act and § 843.15.

(d) Reclamation operations and other activities intended to protect public health and safety and the environment shall continue during the period of any order unless otherwise provided in the order.

(e) An authorized representative of the Secretary may modify, terminate or vacate a cessation order for good cause, and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee.

(f) An authorized representative of the Secretary shall terminate a cessation order by written notice to the permittee when he or she determines that all conditions, practices or violations listed in the order have been abated. Termination shall not affect the right of the Office to assess civil penalties for those violations under Part 845 of this chapter.

§ 843.12 Notices of violation.

(a)(1) An authorized representative of the Secretary shall issue a notice of violation if, on the basis of a Federal inspection carried out during the enforcement of a Federal program or Federal lands program or during Federal enforcement of a State program under section 504(b) or 521(b) of the Act and Part 733 of this chapter, he finds a violation of the Act, this chapter, the applicable program or any condition of a permit or an exploration approval imposed under such program, the Act, or this Chapter, which does not create an imminent danger or harm for which a cessation order must be issued under § 843.11.

(2) When, on the basis of any Federal inspection other than one described in paragraph (a)(1) of this section, an authorized representative of the Secretary determines that there exists a violation of the Act, the State program, or any condition of a permit or exploration approval required by the Act which does not create an imminent danger or harm for which a cessation order must be issued under § 843.11, the authorized representative shall give a written report of the violation to the State and to the permittee so that appropriate enforcement action can be taken by the State. Where the State fails within ten days after notification to take appropriate action to cause the violation to be corrected, or to show good cause for such failure, the authorized representative shall reinspect and, if the violation continues to exist, shall issue a notice of violation or cessation order, as appropriate. No additional notification to the State by the Office is required before the issuance of a notice of violation, if previous notification was given under § 842.11(b)(1)(ii)(B) of this chapter.

(b) A notice of violation issued under this section shall be in writing signed by the authorized representative who issues it, and shall set forth with reasonable specificity:

(1) The nature of the violation;

(2) The remedial action required, which may include interim steps;

(3) A reasonable time for abatement, which may include time for accomplishment of interim steps; and

(4) A reasonable description of the portion of the coal exploration or surface coal mining and reclamation operation to which it applies.

(c) An authorized representative of the Secretary may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet the time previously set was not caused by lack of diligence on the part of the permittee. The total time for abatement under a notice of violation, including all extensions, shall not exceed 90 days from the date of issuance, except upon a showing by the permittee that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in paragraph (f) of this section. An extended abatement date pursuant to this section shall not be granted when the permittee's failure to abate within 90 days has been caused by a lack of diligence or intentional delay by the permittee in completing the remedial action required.

(d)(1) If the permittee fails to meet the time set for abatement the authorized representative shall issue a cessation order under § 843.11(b).

(2) If the permittee fails to meet the time set for accomplishment of any interim step the authorized representative may issue a cessation order under § 843.11(b).

(e) An authorized representative of the Secretary shall terminate a notice of violation by written notice to the permittee when he determines that all violations listed in the notice of violation have been abated. Termination shall not affect the right of the Office to assess civil penalties for those violations under 30 CFR Part 845.

(f) Circumstances which may qualify a surface coal mining operation for an abatement period of more than 90 days are:

(1) Where the permittee of an ongoing permitted operation has timely applied for and diligently pursued a permit renewal or other necessary approval of designs or plans but such permit or approval has not been or will not be issued within 90 days after a valid permit expires or is required, for reasons not within the control of the permittee;

(2) Where there is a valid judicial order precluding abatement within 90 days as to which the permittee has diligently pursued all rights of appeal and as to which he or she has no other effective legal remedy;

(3) Where the permittee cannot abate within 90 days due to a labor strike;

(4) Where climatic conditions preclude abatement within 90 days, or where, due to climatic conditions, abatement within 90 days clearly would cause more environmental harm than it would prevent; or

(5) Where abatement within 90 days requires action that would violate safety standards established by statute or regulation under the Mine Safety and Health Act of 1977.

(g) Whenever an abatement time in excess of 90 days is permitted, interim abatement measures shall be imposed to the extent necessary to minimize harm to the public or the environment.

(h) If any of the conditions in paragraph (f) of this section exists, the permittee may request the authorized representative to grant an abatement period exceeding 90 days. The authorized representative shall not grant such an abatement period without the concurrence of the Director or his or her designee and the abatement period granted shall not exceed the shortest possible time necessary to abate the violation. The permittee shall have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under the provisions of § 843.12(c) and (f). In determining whether or not to grant an abatement period exceeding 90 days the authorized representative may consider any relevant written or oral information from the permittee or any other source. The authorized representative shall promptly and fully document in the file his or her reasons for granting or denying the request. The authorized representative's immediate supervisor shall review this document before concurring in or disapproving the extended abatement date and shall promptly and fully document the reasons for his or her concurrence or disapproval in the file.

(i) Any determination made under paragraph (h) of this section shall contain a right of appeal to the Office of Hearings and Appeals in accordance with 43 CFR 4.1281 and the regulations at 43 CFR Part 4.

(j) No extension granted under paragraph (h) of this section may exceed 90 days in length. Where the condition or circumstance which prevented abatement within 90 days exists at the expiration of any such extension, the permittee may request a further extension in accordance with the procedures of paragraph (h) of this section.

§ 843.13 Suspension or revocation of permits.

(a)(1) The Director shall issue an order to a permittee requiring him or her to show cause why his or her permit and right to mine under the Act should not be suspended or revoked, if the Director determines that a pattern of violations of any requirements of the Act, this chapter, the applicable program, or any permit condition required by the Act exists or has existed, and that the violations were caused by the permittee willfully or through unwarranted failure to comply with those requirements or conditions. Violations by any person conducting surface coal mining operations on behalf of the permittee shall be attributed to the permittee, unless the permittee establishes that they were acts of deliberate sabotage. The Director shall promptly file a copy of any order to show cause with the Office of Hearings and Appeals and the State regulatory authority, if any.

(2) The Director may determine that a pattern of violations exists or has existed, based upon two or more Federal inspections of the permit area within any 12-month period, after considering the circumstances, including:

(i) The number of violations, cited on more than one occasion, of the same or related requirements of the Act, this chapter, the applicable program, or the permit;

(ii) The number of violations, cited on more than one occasion, of different requirements of the Act, this chapter, the applicable program, or the permit; and

(iii) The extent to which the violations were isolated departures from lawful conduct.

(3) The Director shall promptly review the history of violations of any permittee who has been cited for violations of the same or related requirements of the Act, this chapter, the applicable program, or the permit during three or more Federal inspections of the permit area within any 12-month period. If, after such review, the Director determines that a pattern of violations exists or has existed, he or she shall issue an order to show cause as provided in paragraph (a)(1) of this section.

(4)(i) In determining the number of violations within any 12-month period, the Director shall consider only violations issued as a result of a Federal inspection carried out—

(A) During enforcement of a Federal program or a Federal lands program;

(B) During the interim program and before the applicable State program was approved pursuant to Section 502 or 504 of the Act; or

(C) During Federal enforcement of a State program in accordance with section 504(b) or 521(b) of the Act.

(ii) The Director may not consider violations issued as a result of inspections other than those mentioned in paragraph (a)(4)(i) of this section in determining whether to exercise his or her discretion under paragraph (a)(2) of this section, except as evidence of the willful or unwarranted nature of the permittee's failure to comply.

(b) If the permittee files an answer to the show cause order and requests a hearing under 43 CFR Part 4, a public hearing shall be provided as set forth in that Part. The Office of Hearings and Appeals shall give thirty days written notice of the date, time and place of the hearing to the Director, the permittee, the State regulatory authority, if any, and any intervenor. Upon receipt of the notice, the Director shall publish it, if practicable, in a newspaper of general circulation in the area of the surface coal mining and reclamation operations, and shall post it at the State or field office closest to those operations.

(c) Within sixty days after the hearing, and within the time limits set forth in 43 CFR Part 4, the Office of Hearings and Appeals shall issue a written determination as to whether a pattern of violations exists and, if appropriate, an order. If the Office of Hearings and Appeals revokes or suspends the permit and the permittee's right to mine under the Act, the permittee shall immediately cease surface coal mining operations on the permit area and shall:

(1) If the permit and the right to mine under the Act are revoked, complete reclamation within the time specified in the order; or

(2) If the permit and the right to mine under the Act are suspended, complete all affirmative obligations to abate all conditions, practices, or violations as specified in the order.

(d) Whenever a permittee fails to abate a violation contained in a notice of violation or cessation order within the abatement period set in the notice or order or as subsequently extended, the Director shall review the permittee's history of violations to determine whether a pattern of violations exists pursuant to this section, and shall issue an order to show cause as appropriate pursuant to § 845.15(b)(2) of this chapter.

§ 843.14 Service of notices of violation, cessation orders, and show cause orders.

(a) A notice of violation, cessation order, or show cause order shall be served on the person to whom it is directed or his or her designated agent promptly after issuance, as follows:

(1) By tendering a copy at the coal exploration or surface coal mining and reclamation operation to the designated agent or to the individual who, based upon reasonable inquiry, appears to be in charge. If no such individual can be located at the site, a copy may be tendered to any individual at the site who appears to be an employee or agent of the person to whom the notice or order is issued. Service shall be complete upon tender of the notice or order and shall not be deemed incomplete because of refusal to accept.

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the permittee or his or her designated agent. Service shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept.

(b) Designation by any person of an agent for service of notices and orders shall be made in writing to the appropriate State or field office of the Office.

(c) The Office shall furnish copies of notices and orders to the State regulatory authority, if any, promptly after their issuance. The Office may furnish copies to any person having an interest in the coal exploration, surface coal mining and reclamation operation, or the permit area.

§ 843.15 Informal public hearing.

(a) Except as provided in paragraphs (b) and (c) of this section, a notice of violation or cessation order which requires cessation of mining, expressly or by necessary implication, shall expire within 30 days after it is served unless an informal public hearing has been held within that time. The hearing shall be held at or reasonably close to the mine site so that it may be viewed during the hearing or at any other location acceptable to the Office and the person to whom the notice or order was issued. The Office of Surface Mining office nearest to the mine site shall be deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the Office. Expiration of a notice or order shall not affect the Office's right to assess civil penalties with respect to the period during which the notice or order was in effect. No hearing will be required where the condition, practice, or violation in question has been abated or the hearing has been waived. For purposes of this section only, "mining" includes (1) extracting coal from the earth or from coal waste piles and transporting it within or from the permit

area, and (2) the processing, cleaning, concentrating, preparing or loading of coal where such operations occur at a place other than at a mine site.

(b) A notice of violation or cessation order shall not expire as provided in paragraph (a) of this section if the informal public hearing has been waived, or if, with the consent of the person to whom the notice or order was issued, the informal public hearing is held later than 30 days after the notice or order was served. For purposes of this subsection:

(1) The informal public hearing will be deemed waived if the person to whom the notice or order was issued:

(i) Is informed, by written notice served in the manner provided in paragraph (b)(2) of this section, that he or she will be deemed to have waived an informal public hearing unless he or she requests one within 30 days after service of the notice; and

(ii) Fails to request an informal public hearing within that time.

(2) The written notice referred to in paragraph (b)(1)(i) of this section shall be delivered to such person by an authorized representative or sent by certified mail to such person no later than 5 days after the notice or order is served on such person.

(3) The person to whom the notice or order is issued shall be deemed to have consented to an extension of the time for holding the informal public hearing if his or her request is received on or after the 21st day after service of the notice or order. The extension of time shall be equal to the number of days elapsed after the 21st day.

(c) The Office shall give as much advance notice as is practicable of the time, place, and subject matter of the informal public hearing to:

(1) The person to whom the notice or order was issued;

(2) Any person who filed a report which led to that notice or order; and

(3) The State regulatory authority, if any.

(d) The Office shall also post notice of the hearing at the State or field office closest to the mine site and, where practicable, publish it in a newspaper of general circulation in the area of the mine.

(e) Section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings, shall not govern informal public hearings. An informal public hearing shall be conducted by a representative of the Office, who may accept oral or written arguments and any other relevant information from any person attending.

(f) Within five days after the close of the informal public hearing, the Office shall affirm, modify, or vacate the notice or order in writing. The decision shall be sent to—

(1) The person to whom the notice or order was issued;

(2) Any person who filed a report which led to the notice or order; and

(3) The State regulatory authority, if any.

(g) The granting or waiver of an informal public hearing shall not affect the right of any person to formal review under section 518(b), 521(a)(4), or 525 of the Act.

(h) The person conducting the hearing for the Office shall determine whether or not the mine site should be viewed during the hearing. In making this determination the only consideration shall be whether a view of the mine site will assist the person conducting the hearing in reviewing the appropriateness of the enforcement action or of the required remedial action.

§ 843.16 Formal review of citations.

(a) A person issued a notice of violation or cessation order under §§ 843.11 or 843.12, or a person having an interest which is or may be adversely affected by the issuance, modification, vacation or termination of a notice or order, may request review of that action by filing an application for review and request for hearing under 43 CFR Part 4, within 30 days after receiving notice of the action.

(b) The filing of an application for review and request for a hearing under this Section shall not operate as a stay of any notice or order, or of any modification, termination or vacation of either.

§ 843.17 Failure to give notice and lack of information.

No notice of violation, cessation order, show cause order, or order revoking or suspending a permit may be vacated for failure to give the notice to the State regulatory authority required under § 842.11(b)(1)(ii)(B) of this chapter or because it is subsequently determined that the Office did not have information sufficient, under §§ 842.11(b)(1) and 842.11(b)(2) of this chapter, to justify an inspection.

§ 843.18 Inability to comply.

(a) No cessation order or notice of violation issued under this part may be vacated because of inability to comply.

(b) Inability to comply may not be considered in determining whether a pattern of violations exists.

(c) Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under Part 845 of this chapter and of the duration of the suspension of a permit under § 843.13(c).

§ 843.20 Compliance conference.

(a) A permittee may request an on-site compliance conference with an authorized representative to review the compliance status of any condition or practice proposed at any coal exploration or surface coal mining and reclamation operation. Any such conference shall not constitute an inspection within the meaning of section 517 of the Act and section 842.11.

(b) The Office may accept or refuse any request to conduct a compliance conference under paragraph (a). Where the Office accepts such a request, reasonable notice of the scheduled date and time of the compliance conference shall be given to the permittee.

(c) The authorized representative at any compliance conference shall review such proposed conditions and practices as the permittee may request in order to determine whether any such condition or practice may become a violation of any requirement of the Act of any applicable permit or exploration approval.

(d) Neither the holding of a compliance conference under this section nor any opinion given by the authorized representative at such a conference shall affect:

(1) Any rights or obligations of the Office or of the permittee with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such conference; or

(2) The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

PART 845—CIVIL PENALTIES

Sec.

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845.20 Final assessment and payment of penalty.

Authority: Secs. 102, 201, 501(b), 517, 518, 521, 523 and 525 of Pub. L. 95-87, 91 Stat. 448, 449, 468, 498, 499, 504, 510 and 511 (30 U.S.C. 1202, 1211, 1251, 1267, 1268, 1271, 1273 and 1275).

§ 845.1 Scope.

This Part covers the assessment of civil penalties under section 518 of the Act with respect to cessation orders and notices of violation issued under Part 843 (Federal enforcement).

§ 845.2 Objective.

Civil penalties are assessed under section 518 of the Act and this Part to deter violations and to ensure maximum compliance with the terms and purposes of the Act on the part of the coal mining industry.

§ 845.11 How assessments are made.

The Office shall review each notice of violation and cessation order in accordance with the assessment procedures described in 30 CFR 845.12, 845.13, 845.14, 845.15, and 845.16 to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

§ 845.12 When penalty will be assessed.

(a) The Office shall assess a penalty for each cessation order.

(b) The Office shall assess a penalty for each notice of violation, if the violation is assigned 31 points or more under the point system described in 30 CFR 845.13.

(c) The Office may assess a penalty for each notice of violation assigned 30 points or less under the point system described in 30 CFR 845.13. In determining whether to assess a penalty, the Office shall consider the factors listed in 30 CFR 845.13(b).

§ 845.13 Point system for penalties.

(a) The Office shall use the point system described in this section to determine the amount of the penalty and, in the case of notices of violation, whether a mandatory penalty should be assessed as provided in 30 CFR 845.12(b).

(b) Points shall be assigned as follows:

(1) History of previous violations. The Office shall assign up to 30 points based on the history of previous violations. One point shall be assigned for each past violation contained in a notice of violation. Five points shall be assigned for each violation (but not a condition or practice) contained in a cessation order. The history of previous violations, for the purpose of assigning points, shall be determined and the points assigned with respect to a particular coal exploration or surface coal mining operation. Points shall be assigned as follows:

(i) A violation shall not be counted, if the notice or order is the subject of pending administrative or judicial review or if the time to request such review or to appeal any administrative or judicial decision has not expired, and thereafter it shall be counted for only one year.

(ii) No violation for which the notice or order has been vacated shall be counted; and

(iii) Each violation shall be counted without regard to whether it led to a civil penalty assessment.

(2) Seriousness. The Office shall assign up to 30 points based on the seriousness of the violation, as follows:

(i) Probability of occurrence. The Office shall assign up to 15 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points shall be assessed according to the following schedule:

Probability of Occurrence	Points
None	0
Insignificant	1–4
Unlikely	5–9
Likely	10–14
Occurred	15

(ii) Extent of potential or actual damage. The Office shall assign up to 15 points, based on the extent of the potential or actual damage, in terms of area and impact on the public or environment, as follows:

(A) If the damage or impact which the violated standard is designed to prevent would remain within the coal exploration or permit area, the Office shall assign zero to seven points, depending on the duration and extent of the damage or impact.

(B) If the damage or impact which the violated standard is designed to prevent would extend outside the coal exploration or permit area, the Office shall assign eight to fifteen points, depending on the duration and extent of the damage or impact

(iii) Alternative. In the case of a violation of an administrative requirement, such as a requirement to keep records, the Office shall, in lieu of paragraphs (b)(2) (i) and (ii), assign up to 15 points for seriousness, based upon the extent to which enforcement is obstructed by the violation.

(3) Negligence. (i) The Office shall assign up to 25 points based on the degree of fault of the person to whom the notice or order was issued in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points shall be assessed as follows:

(A) A violation which occurs through no negligence shall be assigned no penalty points for negligence;

(B) A violation which is caused by negligence shall be assigned 12 points or less, depending on the degree of negligence;

(C) A violation which occurs through a greater degree of fault than negligence shall be assigned 13 to 25 points, depending on the degree of fault.

(ii) In determining the degree of negligence involved in a violation and the number of points to be assigned, the following definitions apply:

(A) *No negligence* means an inadvertent violation which was unavoidable by the exercise of reasonable care.

(B) *Negligence* means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the Act or this Chapter due to indifference, lack or diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Act due to indifference, lack of diligence, or lack of reasonable care.

(C) *A greater degree of fault than negligence* means reckless, knowing, or intentional conduct.

(iii) In calculating points to be assigned for negligence, the acts of all persons working on the coal exploration or surface coal mining and reclamation site shall be attributed to the person to whom the notice or order was issued, unless that person establishes that they were acts of deliberate sabotage.

(4) Food faith in attempting to achieve compliance.

(i) The Office shall add points based on the degree of good faith of the person to whom the notice or order was issued in attempting to achieve rapid compliance after notification of the violation. Points shall be assigned as follows:

Degree of good faith	Points
Rapid compliance	–1 to –10.
Normal compliance	0.

(ii) The following definitions shall apply under paragraph (b)(4)(i) of this Section:

(A) Rapid compliance means that the person to whom the notice or order was issued took extraordinary measures to abate the violation in the shortest possible time and that abatement was achieved before the time set for abatement.

(B) Normal compliance means the person to whom the notice or order was issued abated the violation within the time given for abatement.

(iii) If the consideration of this criterion is impractical because of the length of the abatement period, the assessment may be made without considering this criterion and may be reassessed after the violation has been abated.

§ 845.14 Determination of amount of penalty.

The Office shall determine the amount of any civil penalty by converting the total number of points assigned under 30 CFR 845.13 to a dollar amount, according to the following schedule:

Points	Dollars
1	$20
2	40
3	60
4	80
5	100
6	120
7	140
8	160
9	180
10	200
11	220
12	240
13	260
14	280
15	300
16	320
17	340
18	360
19	380
20	400
21	420
22	440
23	460
24	480
25	500
26	600
27	700
28	800
29	900
30	1,000
31	1,100
32	1,200
33	1,300
34	1,400
35	1,500
36	1,600
37	1,700
38	1,800
39	1,900
40	2,000
41	2,100
42	2,200
43	2,300
44	2,400
45	2,500
46	2,600
47	2,700
48	2,800
49	2,900
50	3,000
51	3,100
52	3,200
53	3,300
54	3,400
55	3,500
56	3,600
57	3,700
58	3,800
59	3,900
60	4,000
61	4,100
62	4,200
63	4,300
64	4,400
65	4,500
66	4,600
67	4,700
68	4,800
69	4,900
70 and above	5,000

§ 845.15 Assessment of separate violations for each day.

(a) The Office may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the Office shall consider the factors listed in 30 CFR 845.13 and may consider the extent to which the person to whom the notice or order was issued gained any economic benefit as a result of a failure to comply. For any violation which continues for two or more days and which is assigned more than 70 points under § 845.13(b), the Office shall assess a penalty for a minimum of two separate days.

(b) In addition to the civil penalty provided for in paragraph (a), whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to section 521(a) of the Act, a civil penalty of not less than $750 shall be assessed for each day during which such failure to abate continues, except that:

(1)(i) If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under section 525(c) of the Act, after a determination that the person to whom the notice or order was issued will suffer irreparable loss or damage from the application of the requirements, the period permitted for abatement shall not end until the date on which the Office of Hearings and Appeals issues a final order with respect to the violation in question; and

(ii) If the person to whom the notice or order was issued initiates review proceedings under section 526 of the Act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to section 526(c) of the Act, the daily assessment of a penalty shall not be made for any period before entry of a final order by the court;

(2) Such penalty for the failure to abate the violation shall not be assessed for more than 30 days for each such violation. If the permittee has not abated the violation within the 30-day period, the Office shall take appropriate action pursuant to section 518(e), 518(f), 521(a)(4), or 521(c) of the Act within 30 days to ensure that abatement occurs or to ensure that there will not be a reoccurrence of the failure to abate.

§ 845.16 Waiver of use of formula to determine civil penalty.

(a) The Director, upon his own initiative or upon written request received within 15 days of issuance of a notice of violation or a cessation order, may waive the use of the formula contained in 30 CFR 845.13 to set the civil penalty, if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the Director shall not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the Act, this chapter, any applicable program, or any condition of any permit or exploration approval. The basis for every waiver shall be fully explained and documented in the records of the case.

(b) If the Director waives the use of the formula, he or she shall use the criteria set forth in 30 CFR 845.13(b) to determine the appropriate penalty. When the Director has elected to waive the use of the formula, he or she shall give a written explanation of the basis for the assessment made to the person to whom the notice or order was issued.

§ 845.17 Procedures for assessment of civil penalties.

(a) Within 15 days of service of a notice or order, the person to whom it was issued may submit written information about the violation to the Office and to the inspector who issued the notice of violation or cessation order. The Office shall consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

(b) The Office shall serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, within 30 days of the issuance of the notice or order.

(1) If the mail is tendered at the address of that person set forth in the sign required under 30 CFR 816.11, or at any address at which that person is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

(2) Failure by the Office to serve any proposed assessment within 30 days shall not be grounds for dismissal of all or part of such assessment unless the person against whom the proposed penalty has been assessed—

(i) Proves actual prejudice as a result of the delay; and,

(ii) Makes a timely objection to the delay. An objection shall be timely only if made in the normal course of administrative review.

(c) Unless a conference has been requested, the Office shall review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The Office shall serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in paragraph (b), within 30 days after the date the violation is abated.

§ 845.18 Procedures for assessment conference.

(a) The Office shall arrange for a conference to review the proposed assessment or reassessment, upon written request of the person to whom notice or order was issued, if the request is received within 15 days from the date the proposed assessment or reassessment is mailed.

(b)(1) The Office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by section 554 of Title 5 of the United States Code, regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later, PROVIDED: that a failure by the Office to hold such conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

(2) The Office shall post notice of the time and place of the conference at the State or field office closest to the mine at least 5 days before the conference. Any person shall have a right to attend and participate in the conference.

(3) The conference officer shall consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer shall either:

(i) Settle the issues, in which case a settlement agreement shall be prepared and signed by the conference officer on behalf of the Office and by the person assessed; or

(ii) Affirm, raise, lower, or vacate the penalty.

(4) An increase or reduction of a proposed civil penalty assessment of more than 25 percent and more than $500 shall not be final and binding on the Secretary, until approved by the Director or his or her designee.

(c) The conference officer shall promptly serve the person assessed with a notice of his or her action in the manner provided in 30 CFR 845.17(b) and shall include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action shall be fully documented in the file.

(d)(1) If a settlement agreement is entered into, the person assessed will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement shall contain a clause to this effect.

(2) If full payment of the amount specified in the settlement agreement is not received by the Office within 30 days after the date of signing, the Office may enforce the agreement or rescind it and proceed according to paragraph (b)(3)(ii) within 30 days from the date of the rescission.

(e) The conference officer may terminate the conference when he or she determines that the issues cannot be resolved or that the person assessed is not diligently working toward resolution of the issues.

(f) At formal review proceedings under sections 518, 521(a)(4), and 525 of the Act, no evidence as to statements made or evidence produced by one party at a conference shall be introduced as evidence by another party or to impeach a witness.

§ 845.19 Request for hearing.

(a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Office of Hearings and Appeals (to be held in escrow as provided in paragraph (b) of this section) within 30 days from receipt of the proposed assessment or reassessment or 15 days from the date of service of the conference officer's action, whichever is later. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under 30 CFR 843.16.

(b) The Office of Hearings and Appeals shall transfer all funds submitted under paragraph (a) of this section to the Office, which shall hold them in escrow pending completion of the administrative and judicial review process, at which time it shall disburse them as provided in 30 CFR 845.20.

§ 845.20 Final assessment and payment of penalty.

(a) If the person to whom a notice of violation or cessation order is issued fails to request a hearing as provided in § 845.19, the proposed assessment shall become a final order of the Secretary and the penalty assessed shall become due and payable upon expiration of the time allowed to request a hearing.

(b) If any party requests judicial review of a final order of the Secretary, the proposed penalty shall continue to be held in escrow until completion of the review. Otherwise, subject to paragraph (c) of this section, the escrowed funds shall be transferred to the Office in payment of the penalty, and the escrow shall end.

(c) If the final decision in the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under this part, the Office shall within 30 days of receipt of the order refund to the person assessed all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund at the rate of 6 percent or at the prevailing Department of the Treasury rate, whichever is greater.

(d) If the review results in an order increasing the penalty, the person to whom the notice or order was issued shall pay the difference to the Office within 15 days after the order is mailed to such person.

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Monday
August 16, 1982

Part IV

Department of Commerce

International Trade Administration

Preliminary Determinations of Sales at Less Than Fair Value: Certain Steel Products From Belgium, Federal Republic of Germany, France, Italy, the Netherlands, United Kingdom; Carbon Steel Structural Shapes From Luxembourg and Carbon Steel Plate From Romania

DEPARTMENT OF COMMERCE

International Trade Administration

Preliminary Determinations of Sales at Less Than Fair Value: Certain Steel Products From Belgium

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Steel Products From Belgium.

SUMMARY: We have preliminarily determined that certain steel products from Belgium are being sold, or are likely to be sold, in the United States at less than fair value. Therefore, we have notified the United States International Trade Commission (ITC) of our determinations, and we have directed the United States Customs Service to suspend the liquidation of all entries of the subject merchandise (except as noted below) which are entered, or withdrawn from warehouse, for consumption, and to require a cash deposit or bond for each such entry in the amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. We have determined that "critical circumstances" exist only for hot-rolled carbon steel sheet and strip imported from Cockerill Sambre by related companies.

With respect to imports of this product from Cockerill Sambre by related companies, this suspension of liquidation applies to unliquidated entries of the merchandise entered, or withdrawn from warehouse, for consumption, on or after the date which is 90 days before publication of this notice. Critical circumstances do not otherwise exist in these cases. Therefore, with respect to hot-rolled carbon steel sheet and strip imported from Cockerill by unrelated companies, and from companies other than Cockerill, and with respect to imports of carbon steel structural shapes and hot-rolled carbon steel plate, this suspension of liquidation applies to entries of the subject merchandise made on or after the date of publication of this notice. We also have preliminarily determined that Siderurgie Maritime should be excluded from these preliminary determinations with respect to hot-rolled carbon steel plate and hot-rolled carbon steel sheet and strip because we found no sales at less than fair value for this company. If these investigations proceed normally, we will make final determinations by October 25, 1982.

EFFECTIVE DATE: August 16, 1982.

FOR FURTHER INFORMATION CONTACT: Michael J. Altier, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377–1785.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

We have preliminarily determined that there is a reasonable basis to believe or suspect that certain steel products from Belgium are being sold, or are likely to be sold, in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). We have found no sales at less than fair value of hot-rolled carbon steel plate and hot-rolled carbon steel sheet and strip by Siderurgie Maritime. Therefore, we are excluding imports of these products from Siderurgie Maritime from these preliminary determinations.

For carbon steel structural shapes we have found that the foreign market value exceeded the United States price on 23.40 percent of sales. These margins ranged from 0.01 percent to 17.97 percent. The overall weighted-average margin on all sales compared is 1.14 percent.

For hot-rolled carbon steel plate we have found that the foreign market value exceeded the United States price on 30.22 percent of sales. These margins ranged from 0.00 percent to 26.62 percent. The overall weighted-average margin on all sales compared is 1.88 percent.

For hot-rolled carbon steel sheet and strip we have found that foreign market value exceeded the United States price on 89.08 percent of sales. These margins ranged from 0.00 percent to 24.87 percent. The overall weighted-average margin on all sales compared is 9.83 percent.

The weighted-average margins for individual companies investigated are given for each product in the "Suspension of Liquidation" section of this notice.

If these investigations proceed normally, we will make final determinations by October 25, 1982.

Case History

On January 11, 1982, we received petitions from United States Steel Corporation and counsel for Bethlehem Steel Corporation, filed on behalf of the United States industry producing certain steel products. The petitioners alleged certain steel products from Belgium are being, or are likely to be, sold in the United States at less than fair value, and that such sales are materially injuring, or threatening to materially injure, a United States industry. The petitioners also alleged sales in the home market were made at prices below the cost of production. In addition, counsel for Bethlehem Steel Corporation alleged that "critical circumstances," as defined in section 733(e) of the Act, exist in these cases.

After reviewing the petitions, we determined they contained sufficient grounds to initiate antidumping investigations. We notified the ITC of our actions and initiated such investigations on February 1, 1982 (47 FR 5745). The ITC subsequently found, on February 26, 1982, that there is a reasonable indication that imports of carbon steel structural shapes, hot-rolled carbon steel plate and hot-rolled carbon steel sheet and strip from Belgium are materially injuring, or are threatening to materially injure, a U.S. industry. We determined these cases to be "extraordinarily complicated," as defined in section 733(c) of the Act. Therefore, we extended the period for making preliminary determinations by 50 days until August 9, 1982 (47 FR 23508).

Questionnaires were presented to Forges de Clabecq (Clabecq), Fabrique de Fer de Charleroi (Fabfer), Cockerill Sambre (Cockerill) and Siderurgie Maritime (Sidmar) on February 15, 1982. Responses to our questionnaires were received during the period from April 30 to June 1, 1982.

Scope of Investigations

The products covered by these investigations are:

- Carbon steel structural shapes.
- Hot-rolled carbon steel plate.
- Hot-rolled carbon steel sheet and strip.

The products are fully described in Appendix A which follows this notice.

Since Clabecq, Fabfer, Cockerill and Sidmar produce virtually all the carbon steel structural shapes, hot-rolled carbon steel plate and hot-rolled carbon steel sheet and strip exported from Belgium to the United States, we limited our investigations to them.

These investigations cover the period from April 1 to September 30, 1981.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by all four companies, because the merchandise was sold to unrelated purchasers prior to its importation into the United States. Where applicable, prices to unrelated exporters who resell the merchandise to Unites States importers were used to represent purchase price, since the manufacturers know at the time of the sales that the merchandise is destined for the United States.

We calculated the purchase price based on the f.o.b., c.&f., c.i.f., or c.i.f. landed, duty paid, packed or unpacked prices to unrelated customers in the United States or to unrelated exporters who resell the merchandise to United States customers. We made deductions, were appropriate, for discounts, inland freight in Belgium, ocean freight, marine insurance, brokerage charges, miscellaneous port charges, United States duties and sales commissions. We also made additions, where appropriate, for rebated import duties.

Foreign Market Value

In accordance with section 773 of the Act, we calculated foreign market value based on home market sales or, where appropriate, on constructed value. For purposes of determining similar merchandise under section 771(16) of the Act, we made comparisons based on dimensional categories selected by a Commerce Department industry expert.

The petitioners alleged that sales in the home market were at prices below the cost of producing carbon steel structural shapes, hot-rolled carbon steel plate and hot-rolled carbon steel sheet and strip. Cockerill and Sidmar did not provide sufficient information on home market sales to enable us to determine whether their home market seles were at less then cost. These companies are further discussed below. For Clabecq and Fabfer, we examined production costs, including materials, fabrication and general expenses. To avoid possible double counting, we have subtracted from the reported costs of production certain production costs apparently absorbed by the government in the form of grants. These grants were preliminarily determined to be subsidies in the recent notice of "Preliminary Affirmative Countervailing Duty Determinations Certain Steel Products from Belgium" (47 Fed. Reg. 26300). This is consistent, we believe, both with past practice and with the statement of the Court of International Trade in *Connors Steel Company* v. *United States* (CIT , Slip Op. 81–110, November 24, 1981). We invite comments from interested parties on this approach and methodology.

In the case of Clabecq, for certain categories of hot-rolled carbon steel plate, we found that sales were made at less than cost over an extended period of time, in substantial quantities and at prices not permitting recovery of all costs within a reasonable period of time. Consequently, we could not use sales in the home market for these categories of hot-rolled carbon steel plate to determine foreign market value. In the case of Fabfer, for one category of hot-rolled carbon steel plate there were no comparable sales in the home market. Therefore, we used constructed value. For both companies, for all other categories of hot-rolled carbon steel plate and for hot-rolled carbon steel sheet and strip, there were sufficient sales at or above cost of comparable merchandise. Therefore, for these categories we used home market sales prices to determine foreign market value.

Where applicable, we calculated the home market prices for Clabecq and Fabfer on the basis of ex-mill or "free of charge" unpacked prices to unrelated customers. We made deductions, where appropriate, for inland freight and discounts.

Clabecq claimed circumstances of sale adjustments for differences in the costs of credit, testing, warehousing and technical services. We did not make any of these adjustments. The credit expense claim was not allowed because we did not receive sufficient information to calculate the amount of the adjustment. The testing expense claim was not allowed because we had insufficient information to determine whether or not this expense was directly related to the sales. We will seek more information concerning these claims. The warehousing and technical services claims were not allowed because we have preliminarily determined that they are not directly related to the sales under consideration.

For Clabecq and Fabfer, we calculated constructed value by adding the cost of materials, fabrication, general expenses, and profit. We used the cost data provided in the responses as the basis for constructed value except for claimed depreciation for which we used the depreciation expense itemized in the financial statements. In the case of Clabecq, we did not allow certain claims for adjustments to the cost of production including the adjustment of production cost of the plate rolling mill for abnormal running; provision for future rebuilding of blast furnaces; adjustment for slabs not used in making plate; imputed costs for mark-down in material inventories; and price differences between slabs ex-ingot and slabs ex-continuous casting.

For general expenses, in the case of Clabecq, we used the actual general expenses, as calculated by the Department , because they exceeded the statutory minimum of 10 percent. In the case of Fabfer, we used the statutory minimum of 10 percent of the total cost of materials and fabrication, since the actual expenses were less than the statutory minimum. For profit, in the case of Clabecq, we used the statutory minimum of 8 percent of the sum of general expenses and costs since the actual profit was less than the statutory minimum. In the case of Fabfer, we used the company's actual profit since it exceeded the statutory minimum of 8 percent. We did not add packing since merchandise sold to the United States is sold unpacked. We substracted the value of grants, as described above.

With respect to Cockerill and Sidmar we used the best information available as required by section 776(b) of the Act to determine foreign market value. Cockerill and Sidmar did not supply data on a substantial amount of home market sales. However, we used their cost of production information as the best information available, because it was not determined that the responses were incomplete until too late to permit a supplemental response in time for use in these preliminary determinations.

We calculated constructed value for Cockerill and Sidmar by taking the amounts provided by them for materials and fabrication and, in accordance with the Act, adding an amount for general expenses equal to the greater of the respondents' actual expenses, or 10 percent of the amounts given for materials and fabrication. In addition, we added an amount for profit equal to the greater of the profit reported by the respondents, or the 8 percent statutory minimum. Where appropriate, we added packing costs incurred on certain sales to the United States. We also subtracted for the value of grants, as described above.

Supplemental Information Requested

We are requesting Clabecq to provide us with additional information on claims for circumstances of sale adjustments for differences in the cost of credit and testing, and on claims concerning uncollected export duties and taxes. We are also seeking supplemental information on Clabecq's cost of production. We need additional

information on the following factors of production: materials, labor, factory overhead, and general and administrative expenses. In addition, we are requesting supplemental information on adjustments to the cost of production claimed by Clabecq. Although the response was incomplete on the above items, we used Clabecq's data as the best information available for the purposes of our preliminary determinations as discussed in the "Foreign Market Value" section of this notice.

If this supplemental information is not received by September 1, 1982, we may use only some or none of the partial information received in making our final determinations. In that instance, we may resort to using the best information available.

We are requesting Cockerill and Sidmar to provide us with all home market sales information originally requested in our questionnaire but not contained in their responses. Although the responses were incomplete in this regard, we used them as the best information available for purposes of our preliminary determinations as discussed in the "Foreign Market Value" section of this notice.

If this supplemental information is not received by September 1, 1982, we may use only some or none of the partial information received in making our final determinations. In that instance, we may resort to using the best information available.

Partial Affirmative Determination of Critical Circumstances

Counsel for Bethlehem Steel Corporation alleged that imports of steel products under investigation present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist when there is a reasonable basis to believe or suspect that: (1) There have been massive imports of the merchandise under investigation over a relatively short period; and (2)(a) there is a history of dumping in the United States or elsewhere of the merchandise under investigation, or (b) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise under investigation at less than its fair value.

In preliminarily determining whether there is a reasonable basis to believe or suspect that there have been massive imports over a relatively short period, we considered the following factors: recent import penetration levels; changes in import penetration since the date of the ITC's preliminary affirmative determinations of injury; whether imports have surged recently; whether recent imports are significantly above the average calculated over the last 3½ years (January 1979–June 1982); and whether the pattern of imports over that 3½ year period may be explained by seasonal swings. Import statistics available to the Department of Commerce are combined for Belgium and Luxenbourg. However, Cockerill points out in its "Memorandum . . . concerning 'Critical Circumstances' " (at 6), "Based upon the export statistics of these countries, Belgium accounts for practically all imports of plate and hot-rolled sheet and approximately half the imports of structurals."

Based upon our consideration, we preliminarily determine that in the context of the steel industry, imports of hot-rolled carbon steel sheet and strip and hot-rolled carbon steel plate, and possibly carbon steel structural shapes, appear massive over a relatively short period (March through June, 1982).

We therefore proceed to consider whether there is a history of dumping of these products in the United States or elsewhere; or whether the person by whom, or for whose account, these products were imported knew or should have known that the product was being sold at less than its fair value. We believe there is a reasonable basis to believe or suspect that the importer knew or should have known that a product was being dumped: (a) Whenever margins calculated on the basis of responses to the Department's questionnaire are sufficiently large that the importer should have known that prices for sale to the United States (as adjusted according to the antidumping law) were significantly below home market sales (or third country sales or cost of production, as applicable), or (b) whenever its price was recurringly, significantly less than the applicable price established by the Department under the Trigger Price Mechanism ("TPM") (45 FR 66833, which has been suspended since January 11, 1982 (47 FR 2392)). The price levels so established were based upon the cost of production of comparable steel products produced in Japan, which was considered to be on average the world's most efficient steel producer. Where the price of an imported steel product was lower than the price for the comparable Japanese merchandise, we could reasonably infer that the person by whom, or for whose account the merchandise was imported knew or should have known that it was being sold below fair value. In addition, while the TPM was being applied, the Department notified importers of each significant shipment of these products from Belgium/Luxenbourg which entered the United States at prices below the comparable trigger prices. Therefore, all importers had constructive notice, and many additionally had actual notice, of what sorts of shipments might be subject to antidumping investigations under the TPM.

With respect to hot-rolled carbon steel sheet and strip imported from Cockerill by related companies, we believe that the margins are so large that there is a reasonable basis to believe or suspect that these importers knew or should have known that imports of that product from that company were being sold in the United States at less than fair value. We note that this determination may change if the dumping margin for Cockerill is significantly reduced in our final determination on hot-rolled carbon steel sheet and strip from Belgium. With respect to hot-rolled carbon steel sheet and strip imported from Cockerill by unrelated companies and from all other Belgian companies, and with respect to all other products covered by these investigations, the margins are not sufficiently large to justify this inference. In the case of carbon steel structural shapes, hot-rolled carbon steel plate, and hot-rolled carbon steel sheet and strip imported from Cockerill by unrelated companies, and from companies other than Cockerill, the difference between the average import price during the second half of 1981 (the most recent period for which TPM data are available) and the comparable trigger price is too small to warrant or sustain an inference that importers knew or should have known that this merchandise was being sold in the United States at less than fair value.

To ascertain whether there is a history of dumping of these products, on the other hand, we reviewed our and the Department of the Treasury's past antidumping determinations. Although there have been past United States antidumping petitions on these products from Belgium, the petitions were withdrawn and no dumping determinations were made. We also reviewed the antidumping actions of other countries made available to us through the Antidumping Code Committee established by the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. We found no history of dumping of these products from Belgium.

For the reasons described above, we preliminarily determine that critical circumstances exist for hot-rolled carbon steel sheet and strip imported from Cockerill by related companies, but

do not exist for the other products subject to these investigations.

Verification

We will verify all data used in reaching final determinations in these investigations.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of carbon steel structural shapes, hot-rolled carbon steel plate and hot-rolled carbon steel sheet and strip from Belgium, with the exception of hot-rolled carbon steel plate and hot-rolled carbon steel sheet and strip produced by Sidmar. With respect to hot-rolled carbon steel sheet and strip imported from Cockerill by related companies, this suspension of liquidation applies to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date of publication of this notice. With respect to hot-rolled carbon steel sheet and strip imported from Cockerill by unrelated companies, and from companies other than Cockerill, and with respect to all other products covered by these investigations, this suspension of liquidation applies to all merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average margin by which the foreign market value of the merchandise subject to these investigations exceeds the United States price. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

	Weighted-Average Margin (percent)
Carbon Steel Structural Shapes:	
Cockerill Sambre (Cockerill)	1.14
Other manufacturers/producers/exporters	1.14
Hot-Rolled Carbon Steel Plate:	
Forges de Clabecq (Clabecq)	1.70
Fabrique de Fer de Charleroi (Fabfer)	0.79
Cockerill Sambre (Cockerill)	5.17
Siderurgie Maritime (Sidmar)	[1]0.00
Other manufacturers/producers/exporters	5.17
Hot-Rolled Carbon Steel and Strip:	
Forges de Clabecq (Clabecq)	0.86
Cockerill Sambre (Cockerill)	10.88
Siderurgie Maritime (Sidmar)	[1]0.00
Other manufacturers/producers/exporters	10.88

[1] Imports of these products from Sidmar are excluded from these preliminary determinations.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with § 353.47 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 10:00 a.m. on September 7, 1982, at the United States Department of Commerce, Room 6802, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by August 31, 1982. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within thirty days of publication of this notice, at the above address and in at least ten copies.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

August 9, 1982.

Appendix A—Description of Products

For purposes of these investigations:

1. The term *"carbon steel structural shapes"* covers hot-rolled, forged, extruded, or drawn, or cold-formed or cold-finished carbon steel angles, shapes, or sections, not drilled, not punched, and not otherwise advanced, and not conforming completely to the specifications given in the headnotes to Schedule 6, Part 2 of the *Tariff Schedules of the United States Annotated ("TSUSA")*, for blooms, billets, slabs, sheet bars, bars, wire rods, plates, sheets, strip, wire, rails, joint bars, tie plates, or any tubular products set forth in the *TSUSA*, having a maximum cross-sectional dimension of 3 inches or more, as currently provided for in items 609.8005, 609.8015, 609.8035, 609.8041, or 609.8045 of the *TSUSA*. Such products are generally referred to as structural shapes.

2. The term *"hot-rolled carbon steel plate"* covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in items 607.6615, or 607.94, of the *Tariff Schedules of the United States Annotated ("TSUSA")*; and hot- or cold-rolled carbon steel plate which has been coated or plated with zinc including any material which has been painted or otherwise covered after having been coated or placted with zinc, as currently provided for in items 608.0710 or 608.11 of the *TSUSA*. Semifinished products of solid rectangular cross section with a width at least four times the thickness in the as cast condition or processed only through primary mill hot rolling are not included.

3. The term *"hot-rolled carbon steel sheet and strip"* covers the following hot-rolled carbon steel products. Hot-rolled carbon steel sheet is a hot-rolled carbon steel product, whether or not corrugated or crimped and whether or not pickled; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; over 8 inches[1] in width and in coils or if not in coils under 0.1875 inch in thickness and over 12 inches in width;[2] as currently provided for in items 607.6610, 607.6700, 607.8320, 607.8342, or 607.9400 of the *Tariff Schedules of the United States Annotated ("TSUSA"). PLEASE NOTE THAT THE DEFINITION OF HOT-ROLLED CARBON STEEL SHEET INCLUDES SOME PRODUCTS CLASSIFIED AS "PLATE" IN THE TSUSA ITEMS (607.6610 AND 607.8320).* Hot-rolled carbon steel strip is a flat-rolled steel product, whether or not corrugated or crimped and whether or not pickled; not cold-rolled, not cut, not pressed, and not stamped to non-rectangular shape; under 0.1875 inch in thickness and not over 12 inches in width; as currently provided for in items 608.1920, 608.2120, or 608.2320 of the *TSUSA*. Hot-rolled carbon steel strip originally rolled less than 12 inches in

[1] Amended from 12 inches in the initiation notice.

[2] Initiation notice amended by adding after thickness "and over 12 inches in width."

width and containing over 0.25 percent carbon is not included.

4. The term *"cold-rolled carbon steel sheet and strip"* covers the following cold-rolled carbon steel products. Cold-rolled carbon steel sheet is a cold-rolled carbon steel product, whether or not corrugated or crimped and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; over 12 inches in width and in coils or if not in coils under 0.1875 inch in thickness; as currently provided for in items 607.8320 or 607.8344 of the *Tariff Schedules of the United States Annotated ("TSUSA"). PLEASE NOTE THAT THE DEFINITION OF COLD-ROLLED CARBON STEEL SHEET INCLUDES SOME PRODUCTS CLASSIFIED AS "PLATE" IN THE TSUSA (ITEM 607.8320).* Cold-rolled carbon steel strip is a flat-rolled carbon steel product; cold-rolled, whether or not corrugated or crimped and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; under 0.1875 inch in thickness and over 0.50 inch in width but not over 12 inches in width; as currently provided for in items 608.1940, 608.2140, or 608.2340 of the *TSUSA*. Cold-rolled carbon steel strip, originally rolled less than 12 inches in width and containing over 0.25 percent carbon is not included.

5. The term *"galvanized carbon steel sheet"* covers hot- or cold-rolled carbon steel sheert which has been coated or plated with zinc including any material which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0710, 608.0730, 608.11 or 608.13 of the *Tariff Schedules of the United States Annotated ("TSUSA"). NOTE THAT THE DEFINITION OF GALVANIZED CARBON STEEL SHEET INCLUDES SOME PRODUCTS CLASSIFIED AS "PLATE" IN THE TSUSA (ITEMS 608.0710 and 608.11).* Hot- or cold-rolled carbon steel sheet which has been coated or plated with metal other than zinc is not included.

6. the term *"hot-rolled carbon steel bars"* covers hot-rolled carbon steel products of solid section which have cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons, or octagons, not cold-formed, and not coated or plated with metal, as currently provided for in items 606.8310, 606.8330, or 606.8350 of the *Tariff Schedules of the United States Annotated.*

7. the term *"hot-rolled alloy steel bars"* covers hot-rolled alloy steel products, other than those of stainless or tool steel, of solid section which have cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons, or octagons, not cold-formed,[3] as currently provided for in item 606.97 of the *Tariff Schedules of the United States.*

8. the term *"cold-formed carbon steel bars"* covers cold-formed carbon steel products of solid section which have cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons, or octagons, * * * as currently provided for in items 606.8805 or 606.8815 of the *Tariff Schedules of the United States Annotated.*

9. the term *"cold-formed alloy steel bars"* covers cold-formed alloy steel products, other than those of stainless or tool steel, of solid section which have cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons, or octagons,[3] as currently provided for in item 606.99 of the *Tariff Schedules of the United States.*

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Preliminary Determinations of Sales at Less Than Fair Value: Certain Steel Products From the Federal Republic of Germany

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Steel Products From the Federal Republic of Germany.

SUMMARY: We have preliminarily determined that certain steel products from the Federal Republic of Germany (FRG) are being sold, or are likely to be sold, in the United States at less than fair value. Therefore, we have notified the U.S. International Trade Commission (ITC) of our determinations, and we have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise (except as noted below) which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. We have determined that "critical circumstances" do not exist in these cases.

We have also preliminarily determined that imports of carbon steel structural shapes and hot-rolled carbon steel sheet and strip from Stahlwerke Piene-Salzgitter AG should be excluded from the preliminary determinations because we found no sales at less than fair value. We also have perliminarily determined that imports of hot-rolled carbon steel plate from Klockner Werke AG, imports of hot-rolled carbon steel sheet and strip from Krupp Stahl AG and imports of cold-rolled carbon steel sheet and strip from Stahlwerke Piene-Salzgitter AG should be excluded from these determinations because we found 0.26%, 0.03% and 0.03% weighted-average margins, respectively. These margins are *de minimis.*

If these investigations proceed normally, we will make final determinations by October 25, 1982.

EFFECTIVE DATE: August 16, 1982.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-2438.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

We have preliminarily determined that there is a reasonable basis to believe or suspect that certain steel products from the FRG are being sold, or are likely to be sold, in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act).

We have also preliminarily determined that imports of carbon steel structural shapes and hot-rolled carbon steel sheet and strip from Stahlwerke Piene-Salzgitter AG should be excluded from the preliminary determinations because we found no sales at less than fair value. We also have preliminarily determined that imports of hot-rolled carbon steel plate from Klockner Werke AG, imports of hot-rolled carbon steel sheet and strip from Krupp Stahl AG and imports of cold-rolled carbon steel sheet and strip from Stahlwerke Piene-Salzgitter AG should be excluded from these determinations because we found 0.26%, 0.03% and 0.03% weighted-average margins, respectively. These margins are *de minimis.*

For carbon steel structural shapes we have found that the foreign market value exceeded the United States price on 42.6% of sales. These margins ranged from 0.00% to 43.39%. The overall weighted-average margin on all sales compared is 4.94%.

For hot-rolled carbon steel plate we have found that the foreign market value exceeded the United States price on 77.2% of sales. These margins ranged

[3] Initiation notice amended by deleting after octagons "and not coated or plated with metal."

from 0.00% to 34.62%. The overall weighted-average margin on all sales compared is 8.22%.

For hot-rolled carbon steel sheet and strip we have found that the foreign market value exceeded the United States price on 41.8% of sales. These margins ranged from 0.00% to 35.70%. The overall weighted-average margin on all sales compared is 3.94%.

For cold-rolled carbon steel sheet and strip we have found that the foreign market value exceeded the United States price on 44.1% of sales. The margins ranged from 0.00% to 52.04%. The overall weighted-average margin on all sales compared is 6.43%.

The weighted-average margins for individual companies investigated are given for each product in the "Suspension of Liquidation" section of this notice.

The estimated margins for Thyssen, Dillinger, Otto Wolff, Rochling, Hoesch and Klockner are based, wholly or in part, on the best information available as explained in the sections of this notice which describe our fair value comparisons and calculations. These margins could change substantially if new information is furnished in a timely fashion and verified.

If these investigations proceed normally, we will make final determinations by October 25, 1982.

Case History

On January 11, 1982, we received petitions from United States Steel Corporation and counsel for Bethlehem Steel Corporation, filed on behalf of the United States industry producing certain steel products. The petitions alleged that certain steel products from the FRG are being sold in the United States at less than fair value, and that such sales are materially injuring, or are threatening to materially injure, a United States industry. The petitioners also alleged sales in the home market at prices below the cost of production, and that "critical circumstances," as defined in section 733(e) of the Act, exist in these cases.

After reviewing the petitions, we determined they contained sufficient grounds to initiate antidumping investigations. We notified the ITC of our actions and initiated such investigations on February 1, 1982 (47 FR 5742). The ITC subsequently found, on February 26, 1982, that there is a reasonable indication imports of carbon steel structural shapes, hot-rolled carbon steel plate, hot-rolled carbon steel sheet and strip, and cold-rolled carbon steel sheet and strip are materially injuring, or are threatening to materially injure, a United States industry. We determined these cases to be "extraordinarily complicated," as defined in section 733(c) of the Act. Therefore, we extended the period for making preliminary determinations by 50 days until August 9, 1982 (47 FR 23508).

Questionnaires were presented to AG der Dillinger Huttenwerke (Dillinger), Stahlwerke Peine-Salzgitter AG (P & S), Klockner-Werke AG (Klockner), Krupp Stahl AG (Krupp), Otto Wolff AG (Otto Wolff), Thyssen AG (Thyssen), Hoesch Werke AG (Hoesch), and Stahlwerke Rochling-Burbach GmbH (Rochling) on February 15, 1982. Responses were received on May 3, 1982. Rochling did not respond.

Scope of Investigations

The following products are covered by these investigations:

- Carbon steel structural shapes
- Hot-rolled carbon steel plate
- Hot-rolled carbon steel sheet and strip
- Cold-rolled carbon steel sheet and strip

The products are fully described in Appendix A which appears with the notice of "Preliminary Determinations of Sales at Less than Fair Value: Certain Steel Products from Belgium" in this issue of the **Federal Register.**

Since Hoesch, P & S, and Rochling manufacture and export approximately 85% of the carbon steel structural shapes exported from the FRG to the United States, we limited our investigation on carbon steel structural shapes to them.

Since Dillinger, Klockner, and Thyssen manufacture and export approximately 90% of the hot-rolled carbon steel plate exported from the FRG to the United States, we limited our investigation on hot-rolled carbon steel plate to them.

Since Krupp, P & S, Klockner, and Thyssen manufacture and export approximately 95% of the hot-rolled carbon steel sheet and strip exported from the FRG to the United States, we limited our investigation on hot-rolled carbon steel sheet and strip to them.

Since P & S Klockner, Thyssen, Otto Wolff, and Hoesch manufacture and export approximately 85% of the cold-rolled carbon steel sheet and strip exported from the FRG to the United States, we limited our investigation on cold-rolled carbon steel sheet and strip to them.

These investigations cover the period from April 1 to September 30, 1981, for purchase price sales and from July 1 to December 31, 1981, for exporter's sales price transactions.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price to represent United States price for sales by Dillinger, Otto Wolff, Klockner, and Krupp because the merchandise was sold to unrelated purchasers prior to its importation into the United States. For Thyssen, Hoesch, and P & S, we used both purchase price and exporter's sales price, because these companies sold some merchandise to unrelated purchasers prior to its importation into the United States and some to unrelated purchasers in the United States after the date of importation.

We calculated the purchase price based on the f.o.b., c&f., c.i.f., or c.i.f., duty paid, packed price to unrelated purchasers in the United States. Where appropriate, we made deductions for insurance, ocean freight, inland freight, United States duty, brokerage charges and discounts.

When we used exporter's sales price, we made additional deductions, where appropriate, for credit costs, warehousing costs, technical service costs, and other selling expenses.

Krupp sold some hot-rolled carbon steel sheet and strip to unrelated purchasers after importation. However, we did not have sufficient information on its expenses incurred in the United States to calculate properly exporter's sales price. Since these sales represented only a small amount of Krupp's sales to the United States, we did not use them in our comparisons.

With respect to some of Hoesch's sales of cold-rolled carbon steel sheet and strip, we used best information available as required in section 776(b) of the Act to make fair value comparisons. Hoesch provided us with exporter's sales price data based on average resale prices for one subsidiary. After repeated requests, Hoesch did not furnish us with sale specific exporter's sales price data on these sales, which accounted for approximately 20% of Hoesch's sales to the United States. Use of an average exporter's sales price is not permitted by the statute. Therefore, it was impossible to determine a usable exporter's sales price for individual transactions for comparison purposes without resorting to the best information available. We used as the best information available the estimated margin in the United

States Steel Corporation petition on cold-rolled carbon steel sheet and strip, which was the most adverse to the respondent. Hoesch's other United States subsidiary submitted an incomplete exporter's sales price response. Since these sales represented less than one percent of Hoesch's sales to the United States, we disregarded them.

With respect to some of Hoesch's sales of carbon steel structural shapes, we used best information available as required in section 776(b) of the Act to make fair value comparisons. After repeated requests, Hoesch did not provide a response on sales of structural shapes produced by one FRG subsidiary. This made it impossible for us to make fair value comparisons without resorting to the best information available. These sales accounted for approximately 10% of total sales of carbon steel structural shapes to the United States during the period of investigation. Therefore, we used as the best information available the estimated margin in the United States Steel Corporation petition on carbon steel structural shapes, which was most adverse to the respondent.

With respect to Rochling, we used best information available as required in section 776(b) of the Act to make fair value comparisons. After repeated requests, Rochling did not provide a response on sales of structural shapes. This made it impossible for us to make fair value comparisons without resorting to the best information available. Therefore, we used as the best information available the estimated margin in the United States Steel Corporation petition on carbon steel structural shapes, which was most adverse to the respondent.

Foreign Market Value

1. *General Methodology.* In accordance with section 773 of the Act, we used home market prices, where there were sufficient home market sales to determine foreign market value. Where there we no insufficient sales of such or similar merchandise in the home market at or above cost, or where there were no sales of such or similar merchandise, we used constructed value. For purposes of determinating such or similar merchandise under section 771(16) of the Act, we made comparisons based on dimensional categories selected by a Commerce Department industry expert.

The petitioners alleged that sales in the home market were at prices below the cost of producing carbon steel structural shapes, hot-rolled carbon steel plate, hot-rolled carbon steel sheet and strip, and cold-rolled carbon steel sheet and strip. Where possible, we examined production costs, including materials, labor and general expenses. To avoid possible double-counting, we have subtracted from the reported costs of production certain production costs apparently absorbed by the government in the form of grants. These grants were preliminarily determined to be subsidies in the recent notice of "Preliminary Affirmative Countervailing Duty Determinations Certain Steel Products from the Federal Republic of Germany" (47 FR 26321). This is consistent, we believe, both with past practice and with the statement of the Court in *Connors Steel Company v. United States* (—CIT—, Slip Op. 81–110, November 24, 1981). We invite comments from interested parties on this approach and methodology.

We found sales of certain categories of carbon steel structural shapes were made at or below cost over an extended period of time, in substantial quanities and at prices not permitting recovery of all costs within a reasonable period of time. Consequently, we could not use sales in the home market to determine the foreign market value of these categories of carbon steel structural shapes. Therefore, we used constructed value. For all other categories of carbon steel structural shapes, all categories hot-rolled carbon steel plate, hot-rolled carbon steel sheet and strip, and cold-rolled carbon steel sheet and strip, there were sufficient sales in the home market at or above cost. Therefore, we used home market prices to determine foreign market value of these categories of carbon steel structural shapes, hot-rolled carbon steel plate, hot-rolled carbon steel sheet and strip, and cold-rolled carbon steel sheet and strip. For certain other categories of hot-rolled carbon steel sheet and strip, there were no comparable sales in the home market. Therefore, we used constructed value.

For P & S, Klockner, Krupp and Hoesch, home market prices were based on the delivered, ex-mill basing point or ex-factory prices to unrelated purchasers. We made deductions, were appropriate, for inland freight, discounts and rebates. We made adjustments, where appropriate for differences in merchandise, credit costs, commissions, and packing. However, were we compared exporter's sales price with the home market price, we treated adjustments for credit costs and commissions as deductions. In addition, indirect selling expenses were deducted to offset United States selling expenses. Adjustments for differences in merchandise were based on differences in the costs of materials, direct labor and directly related factory overhead. These included an adjustment claimed by Hoesch, for the theoretical minimum weight on sales of cold-rolled carbon steel sheet and strip. We invite comments on the appropriateness of such an adjustment.

For Klockner, Krupp and Hoesch, we calculated constructed value by adding the costs of materials and fabrication, general expenses, profit and the cost of packing in accordance with section 773 of the Act. We deducted home market selling expenses and added those expenses incurred in selling the subject merchandise in the United States. After ascertaining that the amount for general expenses was greater than the statutory minimum of 10% of the costs of materials and fabrication, we added the statutory minimum of 8% of the sum of the actual general expenses and costs as the amount for profit usually reflected in sales of the subject merchandise by manufacturers in the country of exportation, since actual profit was lower than 8% or there was no profit. We added the cost of packing for exports to the United States, where appropriate, and subtracted the value of grants, as described above.

2. *Company Methodology.*

A. *P & S.* With respect to P & S, we found sufficient sales at or above cost on all carbon steel structural shapes, hot-rolled carbon steel sheet and strip, and cold-rolled carbon steel sheet and strip. Therefore, we based our comparisons on home market prices.

P & S sold "tear plate", a form of unpickled hot-rolled carbon steel sheet, to the United States and a third country. There were no sales of tear plate in the home market. Although P & S did report on sales to a third country, we did not use the third country sales since we had sales of similar merchandise in the home market. We compared tear plate sold to the United States to the most similar merchandise sold in the home market with an adjustment for differences in merchandise.

On sales of carbon steel structural shapes, P & S claimed adjustments for differences in merchandise based on a lower yield in the home market, higher roller usage, reheating, additional finishing and handling. We disallowed these claims as not being demonstrated to be directly related to differences in physical characteristics.

B. *Dillinger.* With respect to Dillinger, we used best information available as required by section 776(b) of the Act to determine foreign market value. After repeated requests, Dillinger did not provide data on the physical dimensions

of its hot-rolled carbon steel plate sold to the United States and in the home market. Without the data on physical dimensions, it was impossible to determine similar merchandise, since dimension significantly affects the unit price of carbon steel plate. Therefore, we used as best information available the constructed value as estimated in the Bethlehem Steel Corporation petition on hot-rolled carbon steel plate, since it was the only petition with a cost estimate for "heavy" plate, the product sold by Dillinger. The petitions did not indicate whether they included the 10% statutory minimum for general expenses. Since they stated that the constructed value could be computed by adding the 8% statutory minimum profit and packing, we assumed that general expenses of at least 10% were included. We added the 8% statutory minimum for profit and respondent's packing costs. We subtracted the value of grants, as described in the "General Methodology" section of this notice.

C. *Klockner.* With respect to Klockner, we used best information available for sales of hot-rolled carbon steel plate and hot-rolled carbon steel sheet and strip, as required by section 776(b) of the Act, to determine foreign market value. Although Klockner did not supply data on aproximately 44% of its home market sales of hot-rolled carbon steel plate and 53% of such sales of hot-rolled carbon steel sheet and strip, we used Klockner's cost-of-production information as the best information available, because we did not determine that the response was incomplete until too late to permit a supplemental response in time for use in these preliminary determinations. We calculated constructed value as described in the "General Methodology" section of this notice.

In addition, Klockner only reported on approximately 85% of its home market sales of cold-rolled carbon steel sheet and strip in its response. We determined that in this case this was an adequate basis for preliminarily determining foreign market value. We are requesting information on the other sales. Since we found a sufficient number of sales of all categories of cold-rolled carbon steel sheet and strip in the home market at or above cost, we calculated foreign market value by deducting inland freight, discounts and rebates from the delivered, home market price.

D. *Krupp.* We based foreign market value on information submitted by Krupp, although Krupp only reported on approximately 85% of its home market sales of hot-rolled carbon steel sheet and strip. We made repeated requests for the additional information on the other sales. Even though Krupp did not respond, we determined that in this case, information on 85% of home market sales was an adequate basis for preliminarily determinating foreign market value. We are requesting the sales information once again. Since we found sufficient sales at or above cost of production, we used home market prices. We adjusted the ex-factory prices for differences in commissions, merchandise and packing. We denied claims for differences in related to the sales under consideration. Where we did not credit, technical service, warehousing costs and miscellaneous claims because they were not properly quantrified and/or shown to be directly related to the sales under consideration. Where we did not find sufficient sales at or above cost in the home market, we used constructed value as described in the "General Methodology" section of this notice.

E. *Otto Wolff and Thyssen.* With respect to sales of cold-rolled carbon steel sheet and strip by Otto Wolff and sales of hot-rolled carbon steel plate, hot-rolled carbon steel sheet and strip, and cold-rolled carbon steel sheet and strip by Thyssen, we used best information available as required by section 776(b) of the Act of determine foreign market value. After repeated requests, Otto Wolff did not provide us with home market sales information on approximately 72% of its home market sales of cold-rolled sheet and strip, and Thyssen did not provide us with such information on 55% of its hot-rolled carbon steel plate, 94% of its hot-rolled carbon steel sheet and strip, and 40% of its cold-rolled carbon steel sheet and strip. Based on the sales data provided by Otto Wolff and Thyssen, it was impossible to determine similarity of merchandise or to determine what portion, if any, of sales in the home market were made at or above the cost of production. Furthermore, if sufficient sales were found to have been made at or above cost of production, it would be impossible to calculate accurate weighted-average home market sales price. Therefore, we used as best information available, the constructed values, as estimated in the Bethlehem Steel Corporation petitions on hot-rolled carbon steel plate and cold-rolled carbon steel sheet and strip, and as estimated in the United States Steel Corporation petition on hot-rolled carbon steel sheet and strip, which were most adverse to the respondent. We calculated the constructed value as described in the discussion above on Dillinger.

F. *Hoesch.* With respect to some sales by Hoesch, we used the best information available as described in the "United States Price" section of this notice. None of Hoesch's reported home market sales of carbon steel structural shapes were at or above the cost of production.

Therefore, we used constructed value for these sales. We calculated constructed value as described above in the "General Methodology" section of this notice.

For those comparisons for which we had sufficient United States price data on cold-rolled carbon steel sheet, we determined that we had sufficient sales at or above cost, and therefore, used the home market price. We deducted, where appropriate, inland freight, insurance, discounts and rebates from the delivered or ex-factory price. We made adjustments for differences in merchandise and packing. The adjustment for differences in merchandise was based on a theoretical minimum weight formula. We rejected claims for differences in merchandise for continuous casting, and shorter production runs because they were not shown to be directly related to differences in physical characteristics of the merchandise. We rejected claims for differences in circumstances of sale for technical service costs, research and development expenses, and higher selling costs for smaller quantities, because they were not shown to be directly related to the sales under consideration.

G. *Rochling.* With respect to Rochling, we used the best information available as described in the "United States Price" section of this notice.

Supplemental Information Requested

Section 776(b) of the Act states that whenever any party refuses or is unable to produce information requested, the Commerce Department may use the best information otherwise available for determining the existence of sales at less than fair value. We did so with respect to the following companies for the reasons indicated in the "United States Price" and/or "Foreign Market Value" sections of this notice.

1. *Dillinger.* Because Dillinger refused to provide us with information on the physical dimensions of the plate sold to the United States and in the home market, we based our comparisons on the best information available.

On May 19, 1982, we requested orally, with confirmation in writing on May 25, 1982, that Dillinger provide us with physical dimensions. These requests were denied orally on June 25, 1982.

Subsequently, we reiterated our request on July 7, 1982, by phone call and notified Dillinger that failure to provide this information would require us to use the best information otherwise available, according to section 776(b) of the Act. This request was denied orally on July 7, 1982.

We will ask Dillinger once again to provide this information before verification. If this information is not submitted by September 1, 1982, we will be unable to verify it. We will take into account for our final determination on hot-rolled carbon steel plate any additional information submitted on or before September 1, 1982, which is subsequently verified. The verification of this information could substantially change the sales at less than fair value margin calculated for our preliminary determination on hot-rolled carbon steel plate for Dillinger. Where information is not furnished, or furnished too late to verify, we will use best information available for our final determination on hot-rolled carbon steel plate.

2. *Thyssen.* Because Thyssen refused to provide us with information on a substantial portion of its home market sales of hot-rolled carbon steel plate, hot-rolled carbon steel sheet and strip, and cold-rolled carbon steel sheet and strip, we based foreign market value on the best information available.

On May 19, 1982, we requested orally that Thyssen provided us with the home market data. This request was denied orally on May 19, 1982.

Subsequently, we reiterated our request on May 25, 1982, by letter and notified Thyssen that failure to provide this information would require us to use the best information otherwise available, according to section 776(b) of the Act. This request was denied in writing on June 23, 1982.

We will ask Thyssen once again to provide this information before verification. If this information is not submitted by September 1, 1982, we will be unable to verify it. We will take into account for our final determinations any additional information submitted on or before September 1, 1982, which is subsequently verified. The verification on this information could substantially change the sales at less than fair value margins calculated for our preliminary determinations for Thyseen. Where information is not furnished, or furnished too late to verify, we may use best information available for our final determinations.

3. *Otto Wolff.* Because Otto Wolff refused to provide us with information on a substantial portion of its home market sales of cold-rolled carbon steel sheet and strip, we based foreign market value on the best information available.

On June 3, 1982, we requested orally that Otto Wolff provide us with the home market sales data. This request went unanswered.

Subsequently, we reiterated our request on June 22, 1982, by letter and notified Otto Wolff that failure to provide this information would require us to use the best information otherwise available, according to section 776(b) of the Act. This request was denied in writing on June 24, July 23, and July 26, 1982.

We will ask Otto Wolff once again to provide this information before verification. If this information is not submitted by September 1, 1982, we will be unable to verify it. We will take into account for our final determination on cold-rolled carbon steel sheet and strip any additional information submitted on or before September 1, 1982, which is subsequently verified. The verification of this information could substantially change the sales at less than fair value margins calculated for our preliminary determination on cold-rolled carbon steel sheet and strip for Otto Wolff. Where information is not furnished, or furnished too late to verify, we may use best information available for our final determination on hot-rolled carbon steel sheet and strip.

4. *Hoesch.* Because Hoesch refused to provide us with a response on carbon steel structural shapes sold by Hoesch Huttenwerke AG (at that time know as EHD), we based the EHD margin on the best information available. This margin was weighted with other margins on carbon steel structural shapes sold by Hoesch.

On April 5, 1982, we requested in writing that Hoesch provide us with a response on carbon steel structural shapes sold by EHD. This request was denied orally on April 5, 1982.

Subsequently, we reiterated our request on April 7, 1982, by phone call and notified Hoesch that failure to provide this information would require us to use the best information otherwise available, according to section 776(b) of the Act. This request was denied in writing on May 3, 1982.

In addition, because Hoesch refused to provide us with an adequate exporter's sales price response from one United States subsidiary on cold-rolled carbon steel sheet and strip, we based the margins for that subsidiary on the best information available. The margin was weighted with other margins on cold-rolled carbon steel sheet and strip sold by Hoesch.

On June 15, 1982, we requested orally that Hoesch provide us with a corrected response. This request went unanswered.

Subsequently, we reiterated our request on June 24, 1982, by phone call and notified Hoesch that failure to provide this information would require us to use the best information otherwise available, according to section 776(b) of the Act. This request went unanswered.

We will ask Hoesch once again to provide this information before verification. If this information is not submitted by September 1, 1982, we will be unable to verify it. We will take into account for our final determinations any additional information submitted on or before September 1, 1982, which is subsequently verified. The verification of this information could substantially change the sales at less than fair value margins calculated for our preliminary determinations for Hoesch. Where information is not furnished, or furnished too late to verify, we may use best information available for our final determinations.

5. *Rochling.* Because Rochling refused to provide us with a response on carbon steel structural shapes, we based the weighted-average margin on the best information available.

On April 29, 1982, we requested in writing that Rochling provide us with a response on carbon steel structural shapes. This request was denied in writing on May 18, 1982.

We will ask Rochling once again to provide this information before verification. If this information is not submitted by September 1, 1982, we will be unable to verify it. We will take into account for our final determination on carbon steel structural shapes any additional information submitted on or before September 1, 1982, which is subsequently verified. The verification of this information could substantially change the sales at less than fair value margin calculated for our preliminary determination on carbon steel structural shapes for Rochling. Where information is not furnished, or furnished too late to verify, we may use best information available for our final determination on carbon steel structural shapes.

6. *Klockener.* Because Klockner did not provide us with information on a substantial portion of its home market sales, we are requesting the information on the unreported sales. If this supplemental informatin is not received by September 1, 1982, we may use only some or none of the partial information received relative to home market sales for these products in making our final determinations. In these instances, we may resort to using the best information available for our final determinations.

7. *Krupp.* We are requesting Krupp to provide us with information on its home market sales of hot-rolled carbon steel sheet and strip to auto-makers and information on selling expenses incurred in the United States on its exporter's sales price transactions which were not contained in their response. If this supplemental information is not received by September 1, 1982, we may use only some or none of the partial information received in making our final determination. In this instance, we may resort to using the best information available for our final determination on hot-rolled carbon steel sheet and strip.

Negative Determinations of Critical Circumstances

United States Steel Corporation and counsel for Bethlehem Steel Corporation alleged that imports of all steel products under investigation present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist when there is a reasonable basis to believe or suspect that: (1) There have been massive imports of the merchandise under investigation over a relatively short period; and (2)(a) there is a history of dumping in the United States or elsewhere of the merchandise under investigation, or (b) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise under investigation at less than its fair value.

In determining whether there is a reasonable basis to believe or suspect that there have been massive imports over a relatively short period, we considered the following factors: recent import penetration levels; changes in import penetration since the date of the ITC's preliminary affirmative determinations of injury; whether imports have surged recently; whether recent imports are significantly above the average calculated over the last 3½ years (January 1979–June 1982); and whether the pattern of imports over that 3½ year period may be explained by seasonal swings. Based upon our consideration, we have determined that in the context of the steel industry, imports of hot-rolled carbon steel sheet and strip from the FRG appear massive over a relatively short period (March through June 1982). Imports of the remaining products subject to these investigations do not appear massive over that period.

We therefore proceeded to consider whether there is a history of dumping of hot-rolled carbon steel sheet and strip from the FRG in the U.S. or elsewhere; or whether the person by whom, or for whose account, this product was imported knew or should have known that it was being sold at less than its fair value. We believe there is a reasonable basis to believe or suspect that the importer knew or should have known that a product was being dumped: (a) Whenever margins calculated on the basis of responses to the Department's questionnaire are sufficiently large that the importer should have known that prices for sale to the United States (as adjusted according to the antidumping law) were significantly below home market sales (or third country sales or cost of production, as applicable), or (b) whenever its price was recurringly, significantly less than the applicable price established by the Department under the Trigger Price Mechanism ("TPM") (45 FR 66833, which has been suspended since January 11, 1982 (47 FR 2392)). The price levels so established were based upon the cost of production of comparable steel products produced in Japan, which was considered to be on average the world's most efficient steel producer. Where the price of an imported steel product was lower than the price for the comparable Japanese merchandise, we could reasonably infer that the person by whom, or for whose account the merchandise was imported knew or should have known that it was being sold below fair value. In addition, while the TPM was being applied, the Department notified importers of each significant shipment of these products from the FRG which entered the U.S. at prices below the comparable trigger prices. Therefore all importers had constructive notice, and many additionally had actual notice, of what sorts of shipments might be subject to antidumping investigations initiated under the TPM procedures.

In the case of hot-rolled carbon steel sheet and strip, margins calculated on the basis of responses to the Department's questionnaires are not sufficiently large, particularly where there is no corporate relationship between exporters and importers, that there is a reasonable basis to believe or suspect that the importer knew or should have known that the merchandise was being sold in the United States at less than fair value. Moreover, the difference between the average import price during the second half of 1981 (the most recent period for which TPM data are available) and the comparable trigger price is too small to warrant or sustain such an inference. Therefore, we have no reasonable basis to believe or suspect that importers knew or should have known that hot-rolled carbon steel sheet and strip from the FRG was being sold in the United States at less than fair value.

To ascertain whether there is a history of dumping of hot-rolled carbon steel sheet and strip, on the other hand, we reviewed our and the Department of the Treasury's past antidumping determinations. Although there have been past United States antidumping petitions on hot-rolled carbon steel sheet and strip from the FRG, those petitions were withdrawn and no dumping determinations were made. We also reviewed the antidumping actions of other countries made available to us through the Antidumping Code Committee established by the agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. We found no history of dumping of this product from the FRG.

For the reasons described above, we have determined that critical circumstances do not exist with respect to any of the products subject to these investigations.

Verification

In accordance with section 776(a) of the Act, we verified, to the extent possible, some of the information from Hoesch used in these determinations. We verified the information received on cost of production, all sales, and all adjustments claimed by Hoesch, except information specifically concerning exporter's sales price transactions. We were granted access to Hoesch's books and records. We used standard verfication procedures including on site inspection of the manufacturer's operations and examination of accounting records and selected documents containing relevant information. Data concerning ESP sales will be verified prior to our final determinations.

We will verify all data used in reaching final determinations on these investigations.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of carbon steel structural shapes, hot-rolled carbon steel plate, hot-rolled carbon steel and sheet and strip, and cold-rolled carbon steel sheet and strip from the FRG, with the exception of imports of carbon steel structural shapes, hot-rolled carbon steel sheet and strip and cold-rolled carbon steel sheet and strip from P & S, hot-rolled carbon steel plate produced by Klockner and hot-rolled carbon steel sheet and strip produced by Krupp. This suspension of liquidation applies to all

merchandise entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average margin amount by which the foreign market value of the merchandise subject to these investigations exceeds the United States price. The suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Manufacturer producer/exporter	Weighted-average margin (percent)
Carbon steel structural shapes:	
Hoesch Werke AG (also known as Hoesch Huttenwerke AG, Hoesch Hohenlimburg AG, or Hoesch Siegerlandwerke AG)	10.29
Stahlwerke Peine-Salzgitter AG	[1]0.00
Stahlwerke Rochling-Burbach GmbH	10.90
Other manufacturers/producers/exporters	10.90
Hot-rolled carbon steel plate:	
AG der Dillinger Hutlenwerke	9.25
Klockner-Werke AG	[1]0.00
Thyssen AG	2.41
Other manufacturers/producers/exporters	9.25
Hot-rolled carbon steel sheet and strip:	
Stahlwerke Peine-Salzgitter AG	[1]0.00
Klockner-Werke AG	3.60
Krupp Stahl AG	[1]0.00
Thyssen AG	19.17
Other manufacturers/producers/exporters	19.17
Cold-rolled carbon steel sheet and strip:	
Stahlwerke Peine-Salzgitter AG	[1]0.00
Klockner-Werke AG	0.65
Otto Wolff AG	12.47
Thyssen AG	12.91
Hoesch Werke AG (also known as Hoesch Huttenwerke AG, Hoesch Hohenlimburg AG, or Hoesch Siegerlandwerke AG)	6.92
Other manufacturers/producers/exporters	12.91

[1] Imports of these products are excluded from these determinations because the weighted average margins are *de minimis* as indicated below.

Carbon steel structural shapes: Stahlwerke Peine-Salzgitter AG—0.11%.

Hot-rolled carbon steel plate: Klockner-Werke AG—0.26%.

Hot-rolled carbon steel sheet and strip: Krupp Stahl AG—0.03%.

Cold-rolled carbon steel sheet and strip: Stahlwerke Peine Salzgitter AG—0.03%.

[2] Imports of this product from Stahlwerke Peine-Salzgitter AG are excluded from our preliminary determinations, because we found no sales at less than fair value.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with § 353.47 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 1:00 p.m. on September 9, 1982, at the U.S. Department of Commerce, Room 6802, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discusssed. In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by September 2, 1982. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within thirty days of this notice's publication, at the above address and in at least ten copies.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

August 9, 1982.

[FR Doc. 82-22234 Filed 8-13-82; 8:45 am]

BILLING CODE 3510-25-M

Preliminary Determinations of Sales at Less Than Fair Value: Certain Steel Products From France

AGENCY: International Trade Administration, Commerce.

ACTION: Preliminary Determinations of Sales at Less Than Fair: Certain Steel Products From France.

SUMMARY: We have preliminarily determined that certain steel products from France are being sold, or are likely to be sold, in the United States at less than fair value. Therefore, we have notified the U.S. International Trade Commission (ITC) of our determinations, and we have directed the U.S. Customs Service to suspend the liquidation of all entries (except as noted below) of the subject merchandise. We have determined that "critical circumstances" exist in these cases. Therefore, this suspension of liquidation applies to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption, on or after the date which is 90 days before publication of this notice. We have also directed the U.S. Customs Service to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. We have also preliminarily determined that Dilling, one of the three companies investigated, should be excluded from these preliminary determinations because we found no sales at less than fair value for hot-rolled carbon steel sheet and strip, and a 0.19 percent weighted-average margin on sales of cold-rolled carbon steel sheet and strip. This margin is *de minimus*. If these investigations proceed normally, we will make final determinations by October 25, 1982.

EFFECTIVE DATE: August 16, 1982.

FOR FURTHER INFORMATION CONTACT: Nicholas C. Tolerico, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377–4036.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

We have preliminarily determined that there is a reasonable basis to believe or suspect that certain steel products from France are being sold, or are likely to be sold, in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). We have found no sales at less than fair value of hot-rolled carbon steel sheet and strip, and a 0.19 percent weighted-average margin on sales of cold-rolled carbon steel sheet and strip by Dilling. This margin is *de minimis*. Therefore, we are excluding imports of these products from Dilling from these preliminary determinations.

For carbon steel structural shapes, we have found that the foreign market value exceeded the United States price on 100 percent of sales. These margins ranged from 0.03 percent to 23.54 percent. The weighted-average margin on all sales compared is 9.06 percent.

For hot-rolled carbon steel sheet and strip, we have found that the foreign market value exceeded the United States price on 45.90 percent of sales. These margins ranged from 0 to 42.32 percent. The overall weighted-average margin on all sales compared is 8.40 percent.

For cold-rolled carbon steel sheet and strip, we have found that the foreign market value exceeded the United States price on 49.50 percent of sales. These margins ranged from 0 to 47.20 percent. The overall weighted-average margin on all sales compared is 11.50 percent.

The weighted-average margins for individual companies investigated are given for each product in the "Suspension of Liquidation" section of this notice.

The estimated margins for one of the producers, Sacilor, were based on the best information available, as explained below in the sections of this notice which describe our fair value comparisons and calculations. Those margins could change substantially if new information is furnished in a timely fashion and verified.

If these investigations proceed normally, we will make final determinations by October 25, 1982.

Case History

On January 11, 1982, we received petitions from the United States Steel Corporation and counsel for the Bethlehem Steel Corporation, filed on behalf of the United States industry producing certain steel products. The petitioners alleged certain steel products from France are being, or are likely to be, sold in the United States at less than fair value, and that such sales were materially injuring, or threatening to materially injure, a United States industry. The petitioners also alleged sales in the home market were being made at prices below the cost of production, and the "critical circumstances," as defined in section 733(e) of the Act, exist in these cases.

After reviewing the petitions, we determined they contained sufficient grounds to initiate antidumping investigations. We notified the ITC of our actions and initiated such investigations on February 1, 1982 (47 FR 5740). The ITC subsequently found, on February 26, 1982, that there is a reasonable indication imports of carbon steel structural shapes, hot-rolled carbon steel sheet and strip, and cold-rolled carbon steel sheet and strip, are materially injuring, or are threatening to materially injure, a United States industry. We determined these cases to be "extraordinarily complicated," as defined in section 733(c) of the Act. Therefore, we extended the period for making preliminary determinations by 50 days until August 9, 1982 (47 FR 23508).

Questionnaires were presented to Société des Aciéries et Laminoirs de Lorraine (Sacilor) and Union Sidérurgique du Nord et de l'Est de la France (Usinor) on February 11, 1982. Responses were received on April 22 from Sacilor, and on May 24 from Usinor. The response received with regard to our antidumping investigations of "Certain Steel Products from the Federal Republic of Germany" on May 3, from AG der Dillinger Hüttenwerke, known in France as Société Anonyme des Forges et Aciéries de Dilling (Dilling), contained information relevant to its sales of the subject merchandise manufactured on its behalf in France and exported from that country.

Scope of the Investigation

- Carbon steel structural shapes,
- Hot-rolled carbon steel sheet and strip, and
- Cold-rolled carbon steel sheet and strip.

The products are fully described in Appendix A which appears with the notice of "Preliminary Determinations of Sales at Less Than Fair Value: Certain Steel Products from Belgium" in this issue of the **Federal Register.**

Since Dilling, Sacilor, and Usinor manufacture approximately 91.8 percent of carbon steel structural shapes, 98.8 percent of cold-rolled carbon steel sheet and strip, and 100 percent of hot-rolled carbon steel sheet and strip, exported from France to the United States, we limited our investigations to these companies.

These investigations cover the period from April 1 to September 30, 1981, for purchase price sales and from July 1 to December 31, 1981, for exporter's sales price transactions.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by Dilling and Sacilor, and for certain sales by Usinor, because the merchandise was sold to unrelated purchasers prior to its importation into the United States. For other sales by Usinor, we used exporter's sales price because the merchandise was sold to unrelated purchasers in the United States after the date of importation.

We calculated the purchase price based on the c. & f. or the c.i.f., duty-paid, delivered, packed price to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, insurance, brokerage charges, United States duties, and United States inland freight.

Where we used exporter's sales price, we made additional deductions for credit costs, warranty expenses, and other selling expenses.

Foreign Market Value

With regard to Usinor, we used home market prices, in accordance with section 773 of the Act, where there were sufficient sales made at prices at or above the cost of production to determine foreign market value. Where there were insufficient sales made in the home market at prices at or above the cost of production, we used constructed value. For purposes of determining such or similar merchandise under section 771(16) of the Act, we made comparisions for hot-rolled carbon steel sheet and strip and cold-rolled carbon steel sheet and strip based on dimensional categories selected by a Commerce Department industry expert.

The petitioners alleged that sales in the home market were at prices below the cost of producing hot-rolled carbon steel sheet and strip and cold-rolled carbon steel sheet and strip. For Usinor, we examined production costs, including materials, labor, and general expenses. To avoid possible double-counting, we have subtracted from the reported costs of production certain production costs apparently absorbed by the government in the form of grants. These grants were preliminarily determined to be subsidies in the recent notice of "Preliminary Affirmative Countervailing Duty Determination Certain Steel Products from France" (47 FR 26318). This is consistent, we believe, both with past practice and with the statement of the Court of International Trade in *Connors Steel Company v. United States* (——CIT——, Slip Op. 81–110, November 24, 1981). We invite comments from interested parties on this approach and methodology. We found sales of certain categories of hot-rolled carbon steel sheet and strip were made at less than the cost of production over an extended period of time, in substantial quantities, and at prices not permitting recovery of all costs within a reasonable period of time.

Consequently, for these categories of hot-rolled carbon steel sheet and strip, we could not use sales in the home market to determine the foreign market value. Therefore, we used constructed value. For all other categories of hot-rolled carbon steel sheet and strip and all categories of cold-rolled carbon steel sheet and strip, sufficient sales were made in the home market at or above the cost of production. Therefore, we used home market prices to determine foreign market value.

The home market prices for Usinor were based on delivered, packed prices to unrelated purchasers. From these prices, we deducted inland freight,

discounts, and rebates. We made adjustments for credit costs, warranty expenses, differences in merchandise, and packing charges. The adjustments for differences in merchandise were based on differences in the costs of materials, labor, and directly related factory overhead.

Where we compared exporter's sales price with the foreign market value, we treated the credit costs and warranty expenses as deductions, instead of adjustments, and deducted indirect selling expenses to offset United States selling expenses.

Usinor claimed an adjustment for commissions paid to Usinor-Vente. We made no adjustment, since commissions paid to related parties are not allowable under § 353.10 of the Commerce Regulations.

Usinor also claimed adjustments for a cost-of-production differential between plants, and for depreciation and financial charges. We disallowed these adjustments, since they do not relate to physical differences in the merchandise, as required by § 353.16 of the Commerce Regulations.

We calculated constructed value by adding the cost of materials and fabrication, general expenses, profit, and the cost of packing, in accordance with section 733(e) of the Act. We deducted home market selling expenses, and added those expenses incurred in selling the subject merchandise to the United States. The most recent cost figures supplied by Usinor were for 1980. We requested Usinor to update their 1980 cost data; this request was not answered. Therefore, in order to arrive at 1981 cost data, we adjusted the 1980 figures upward by 13.7 percent, which was the 1981 increase in the French industrial price index (Source: Institut National de la Statistique et des Etudes Economiques—I.N.S.E.E.). This represents the best information available. Because Usinor did not supply its general expenses in its reponse, and the petitioners did not break out general expenses in their cost-of-production estimates, we applied the statutory minimum of 10 percent. Similarly, since Usinor did not provide us with figures for profit, we applied the statutory minimum of 8 percent. We also subtracted the value of grants, as described above.

With regard to Dilling, we used best information available, in accordance with section 776(b) of the Act, to determine foreign market value. Although Dilling did not supply the physical dimensions of the merchandise sold to the United States, or adequate home market sales data, we used Dilling's cost-of-production information as the best information available from which to calculate a constructed value, because it was not determined until too late to permit a supplemental response in time for use in these preliminary determinations that the response was incomplete. We added the statutory minimum of ten percent of the sum of material and fabrication costs for general expenses, since the actual expenses were lower than the statutory minimum. We added Dilling's reported per ton profit to the constructed value, as it was higher than the statutory minimum of 8 percent. We did not add packing, since merchandise was sold unpacked to the United States.

With regard to Sacilor, we used best information available, in accordance with section 776(b) of the Act, to determine foreign market value. After repeated requests, Sacilor did not provide us with sufficient home market sales data. Based on the sales data presented by Sacilor, it is impossible to determine similarity of merchandise or to determine what portion, if any, of sales in the home market were made at prices at or above the cost of production. Furthermore, if we had found sufficient sales made at or above the cost of production, it would have been impossible to calculate an accurate weighted-average home market sales price. Therefore, we used as best information available the constructed value of the merchandise, as estimated in the petition by the United States Steel Corporation, because it is most adverse. We subtracted the value of grants, as discussed above.

Supplemental Information Requested

Because Dilling did not submit home market sales data or provide us with the physical dimensions of the merchandise sold to the United States, it was impossible to determine similarity of merchandise. Since dimensions significantly affect the per ton unit price of steel, we could not group dimensionally comparable home market and United States sales so as to use home market prices in meaningful price-to-price comparisons. Lack of home market sales data also made it impossible to determine what percentage of home market sales were made at or above the cost of production. Furthermore, if we had found sufficient sales made at or above the cost of production, it would have been impossible to calculate an accurate weighted-average home market sales price. Therefore, we will ask Dilling to provide physical dimensions of the merchandise sold to the United States as well as complete home market sales information before verification. If this information is not submitted by September 1, 1982, we will be unable to verify it. We will take into account for our final determinations any additional information submitted on or before September 1, 1982, which is subsequently verified. The verification of this information could substantially change the sales at less than fair value margins calculated for Dilling for our preliminary determinations. If the above supplemental information is not received by September 1, 1982, we may use only some or none of the partial information received in making our final determinations. In that instance, we may resort to using the best information available for our final determinations.

Because Sacilor refused to provide us with complete home market sales data, as required by section 776(b) of the Act, we based our comparisons on the best information available, as described above in the "Foreign Market Value" section. On May 17, 1982, we requested in writing that Sacilor provide us with a complete listing of its home market sales. We explained to Sacilor that without this information, it would be impossible for us to utilize its home market data. This request went unanswered. Subsequently, we reiterated our request on June 14 by phone call, and notified Sacilor in person on June 16 that failure to provide this information would require us to use the best information available, according to section 776(b) of the Act. This request was never satisfactorily answered.

We will ask Sacilor once again to provide this information before verification. If this information is not submitted by September 1, 1982, we will be unable to verify it. We will take into account for our final determinations any additional information submitted on or before September 1, 1982, which is subsequently verified. The verification of this information could substantially change the sales at less than fair value margins calculated for Sacilor for our preliminary determinations. Where information is not furnished, or furnished too late to verify, we may use best information available for our final determinations.

We requested Usinor to update its 1980 cost information; this request was not answered. Although the response was incomplete in this regard, we decided to use it as the best information available for purposes of our preliminary determinations, as explained above in the "Foreign Market Value" section. We also requested Usinor to provide us with general overhead expenses, financial expenses,

and depreciation charges, which were not contained in its response. This request also was not answered. Because of the absence of this information, we used the best information available, as described above in the "Foreign Market Value" section. We are requesting Usinor to provide us with this information. If the above supplemental information is not received by September 1, 1982, we may use only some or none of the partial information received relative to Usinor's cost of production in making our final determinations. In that instance, we may resort to using the best information available for our final determinations.

Affirmative Determinations of Critical Circumstances

The United States Steel Corporation and counsel for the Bethlehem Steel Corporation alleged that imports of all steel products under investigation present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist when there is a reasonable basis to believe or suspect that: (1) There have been massive imports of the merchandise under investigation over a relatively short period; and (2)(a) there is a history of dumping in the United States or elsewhere of the merchandise under investigation, or (b) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise under investigation at less than its fair value.

In preliminarily determining whether there is a reasonable basis to believe or suspect that there have been massive imports over a relatively short period, we considered the following factors: recent import penetration levels; changes in import penetration since the date of the ITC's preliminary affirmative determinations of injury; whether imports have surged recently; whether recent imports are significantly above the average calculated over the last three and a half years (January 1979 to June 1982); and whether the pattern of imports over that three-and-a-half-year period may be explained by seasonal swings. Based upon our consideration, we preliminarily determine that in the context of the steel industry, imports of the products covered by these investigations appear massive over a relatively short period (March through June 1982).

We therefore proceeded to consider whether there is a history of dumping of these products in the United States or elsewhere; or whether the person by whom, or for whose account, these products were imported knew or should have known that the product was being sold at less than its fair value. We believe there is a reasonable basis to believe or suspect that the importer knew or should have known that a product was being dumped: (a) Whenever margins calculated on the basis of responses to the Department's questionnaires are sufficiently large that the importer should have known that prices for sale to the United States (as adjusted according to the antidumping law) were significantly below home market sales, or (b) whenever its price was recurringly, significantly less than the applicable price established by the Department under the Trigger Price Mechanism (TPM) (45 FR 66833), which has been suspended since January 11, 1982 (47 FR 2392). The price levels so established were based upon the cost of production of comparable steel products produced in Japan, which was considered to be on average the world's most efficient steel producer. Where the price of an imported steel product was lower than the price for the comparable Japanese merchandise, we could reasonably infer that the person by whom, or for whose account the merchandise was imported knew or should have known that it was being sold below fair value.

In addition, while the TPM was being applied, the Department notified importers of each significant shipment of these products from France which entered the United States at prices below the comparable trigger prices. Therefore all importers had constructive notice, and many additionally had actual notice, of what sorts of shipments might be subject to antidumping investigations initiated under the TPM procedures.

With respect to all products subject to these investigations, margins caculated on the basis of responses to the Department's questionnaires are not sufficiently large, particularly where there is no corporate relationship between exporters and importers, that there is a reasonable basis to believe or suspect that the importer knew or should have known that the merchandise was being sold in the United States at less than fair value. Moreover, with respect to carbon steel structural shapes, the difference between the average import price during the second half of 1981 (the most recent period for which TPM data are available) and the comparable trigger price is too small to warrant or sustain such an inference. With respect to hot-rolled carbon steel sheet and strip and cold-rolled carbon steel sheet and strip, however, such difference is significant, and sustains this inference. This inference is further supported by the Department's extensive actual notification to importers of possible sales of these products at less than fair value. The Department sent query letters to importers regarding 56 separate shipments of hot-rolled carbon steel sheet and strip from France (cumulatively nearly 50,000 tons), and regarding 23 separate shipments of cold-rolled carbon steel sheet and strip from France (cumulatively about 11,000 tons).

To ascertain whether there is a history of dumping of carbon steel structural shapes, we reviewed our past antidumping determinations as well as the Treasury Department's. Although there have been antidumping petitions in the past on imports of this product from France, they were withdrawn and no antidumping determination was made. We also reviewed the antidumping actions of other countries made available to us through the Antidumping Code Committee established by the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade. We dicovered that since 1977, there has been a Canadian order assessing antidumping duties on many, though not all types of carbon steel structural shapes from France. For purposes of this preliminary determination, we beleive that Canadian order provides a reasonable basis to believe or suspect that there is a history of dumping of carbon steel structural shapes from France in the United States or elsewhere.

For the reasons described above, we preliminarily determine that critical circumstances exist for all products covered by these investigations.

We believe that a preliminary affirmative determination of critical circumstances in these investigations is fully in conformity with the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (the Antidumping Code). Article 11 of the Antidumping Code—upon which section 733(e) of the Act is modeled—allows antidumping duties to be levied for "not more than 90 days prior to the date of application of provisional measures," provided:

"(a) either * * * there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury, and

"(b) that the injury is caused by sporadic dumping (massive dumped imports of a product in a relatively short period) to such an extent that, in order to preclude it recurring, it appears necessary to levy an

antidumping duty retroactively on those imports."

As explained above, we believe that there have been massive imports of all products subject to these investigations over a relatively short period. We further believe that retroactive levying of antidumping duties is necessary to preclude recurrence of such surges in imports of these products from France into the United States. Based upon recent import statistics, it is reasonable to suspect that these products were imported in massive quantities in the spring and early summer of 1982 in order to avoid possible antidumping and/or countervailing duties. We believe that the retroactive levying will serve as necessary and effective warning that merchandise subject to United States antidumping or countervailing duty investigations may not be rushed into the United States in order to avoid possible antidumping or countervailing duties.

Moreover, we note that since the ITC made preliminary determinations of injury with respect to imports of these products on February 26, 1982, the general conditions of the United States steel industry appear to have deteriorated further. Rate of capacity utilization has declined from approximately 59.7 percent (for the week ending February 20) to approximately 42.3 percent (for the week ending August 7). Apparant consumption in the United States decreased from 6.9 million tons in February to 6.7 million tons in May. A survey by the American Iron and Steel Institute indicates that between February 27 and July 31, an additional 47,277 steelworkers in the United States were laid off, and an additional 1,179 were reduced to a short working week. Finally, several major United States steel companies recently posted large mid-year financial losses. Against this background, we believe that this preliminary determination of critical circumstances is fully in accord with the spirit as well as the letter of the Antidumping Code.

Verification

In accordance with section 776(a) of the Act, we will verify all data used in reaching final determinations in these investigations.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of carbon steel structural shapes, hot-rolled carbon steel sheet and strip, and cold-rolled carbon steel sheet and strip from France which are subject to these investigations, with the exception of hot-rolled carbon steel sheet and strip and cold-rolled carbon steel sheet and strip exported by Dilling. This suspension of liquidation applies to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption, on or after the date which is 90 days before the date of publication of this notice. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average margin by which the foreign market value of the merchandise subject to these investigations exceeds the United States price. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Weighted-average margins

	Percent
Carbon steel structural shapes:	
Sacilor	9.06
All others	9.06
Hot-rolled carbon steel sheet and strip:	
Dilling	[1]0.00
Sacilor	23.11
Usinor	2.39
All others	23.11
Cold-rolled carbon steel sheet and strip:	
Dilling	[2]0.00
Sacilor	27.69
Usinor	1.33
All others	27.69

[1] Imports of this product from Dilling are excluded from this preliminary determination.

[2] Imports of this product from Dilling are excluded from this preliminary determination. As the weighted-average margin for this product was 0.19 percent, which is *de minimis*, we are listing this cash deposit or bonding rate as 0.00 percent for purposes of this preliminary determination.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with § 353.47 of the Commerce Department regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 10:00 a.m. on September 8, 1982 at the United States Department of Commerce, Room 3080, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by September 1, 1982. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within thirty days of publication of this notice, at the above address and in at least ten copies.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

August 9, 1982.

[FR Doc. 82-22105 Filed 8-13-82; 8:45 am]

BILLING CODE 3510-25-M

Preliminary Determinations of Sales at Less Than Fair Value: Certain Steel Products from Italy

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Steel Products From Italy.

SUMMARY: We have preliminarily determined that certain steel products from Italy are being sold, or are likely to be sold, in the United States at less than fair value. Therefore, we have notified the U.S. International Trade Commission (ITC) of our determinations, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. We have determined that "critical circumstances" do not exist in these cases. If these investigations proceed normally, we will make final determinations by October 25, 1982.

EFFECTIVE DATE: August 16, 1982.

FOR FURTHER INFORMATION CONTACT:

Charles E. Wilson, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street &

Constitution Avenue, NW., Washington, D.C. 20230, telephone: (202) 377–5288.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

We have preliminarily determined that there is a reasonable basis to believe or suspect that certain steel products from Italy are being sold, or are likely to be sold, in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act).

For cold-rolled carbon steel sheet and strip, we found that the foreign market value exceeded the United States price on 99% of sales. These margins ranged from 0.00% to 30.71%. The weighted-average margin on all sales compared is 9.72%.

For hot-rolled carbon steel sheet and strip, we found that the foreign market value exceeded the United States price on 36% of sales. These margins ranged from 0.00% to 21.62%. The weighted-average margin on all sales compared is 2.07%.

The weighted-average margins for individual companies investigated are given for each product in the "Suspension of Liquidation" section of this notice.

The estimated margin for Teksid S.p.A. is based on the best information available, as explained below in the sections of this notice which describe our fair value comparisons and calculations. That margin could change substantially if new information is furnished in a timely fashion and verified.

If these investigations proceed normally, we will make final determinations by October 25, 1982.

Case History

On January 11, 1982, we received petitions from United States Steel Corporation and counsel for Bethlehem Steel Corporation filed on behalf of the U.S. industry producing certain steel products. The petitioners alleged certain steel products from Italy are being sold or are likely to be sold, in the United States at less than fair vale, and that such sales are materially injuring, or are threatening to materially injure, a U.S. industry. The petitioners also alleged sales in the home market at prices below the cost of production. In addition, counsel for Bethlehem Steel Corporation alleged that "critical circumstances," as defined in section 733(e) of the Act, exist in these cases.

After reviewing the petitions, we determined that they contained sufficient grounds to initiate antidumping investigations. We notified the ITC of our actions and initiated such investigations on February 1, 1982 (47 FR 5747). The ITC subsequently found, on February 26, 1982, that there is a reasonable indication these imports of cold-rolled carbon steel sheet and strip and hot-rolled carbon steel sheet and strip are materially injuring, or are threatening to materially injure, a United States industry. We determined these cases to be "extraordinarily complicated," as defined in section 733(c) of the Act. Therefore, we extended the period for making preliminary determinations by 50 days until August 9, 1982 (47 FR 23508).

Questionnaires were presented to Nuova Italsider S.p.A. and Teksid S.p.A. on February 8, 1982. A response was received on April 30, 1982, from Nuova Italsider S.p.A. A response was not received from Teksid S.p.A.

Scope of Investigations

The products covered by these investigations are:

- Cold-rolled carbon steel sheet and strip.
- Hot-rolled carbon steel sheet and strip.

These investigations cover the period from April 1 to December 31, 1981.

The products are fully described in Appendix A which appears with the notice of "Preliminary Determinations of Sales at Less Than Fair Value: Certain Steel Products from Belgium" in this issue of the **Federal Register.**

Since Nuova Italsider S.p.A. and Teksid S.p.A. maunfacture virtually all of the cold-rolled carbon steel sheet and strip exported from Italy to the United States, we limited our investigation of that product to these companies.

Since Nuova Italsider S.p.A. manufactures virtually all of the hot-rolled carbon steel sheet and strip exported from Italy to the United States, we limited our investigation of that product to this company.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by Nuova Italsider S.p.A because the merchandise was sold to unrelated purchasers prior to its importation into the United States.

We calculated the purchase price based on the c. & f., c.i.f. or c.i.f. duty paid, packed price to unrelated purchasers in the United States. Where appropriate, we made deductions for brokerage and handling, ocean freight and marine insurance, and United States duty.

Foreign Market Value

As provide for in section 773 of the Act, we used constructed value to determine foreign market value.

The petitioners alleged sales in the home market were at prices below the cost of producing cold-rolled carbon steel sheet and strip and hot-rolled carbon steel sheet and strip. As Nuova Italsider S.p.A. did not provide home market sales data in the form requested, we were unable to make a precise comparison of home market sales with the cost of production. However, since Nuova Italsider S.p.A. has agreed with the petitioner's allegations that sales in the home market were at prices below the cost of producing these products, we disregarded their home market prices and used constructed value for these preliminary determinations.

We calculated constructed value by adding the cost to materials and of fabrication, general expenses, profit, and the cost of packing in accordance with section 773 of the Act. We examined production costs, including materials, fabrication and general expenses. To avoid possible double counting, we have subtracted from the reported costs of production certain production costs apparently absorbed by the government in the form of grants. These grants were preliminarily determined to be subsidies in the recent notice of "Preliminary Affirmative Countervailing Duty Determinations Certain Steel Products from Italy" (47 FR 26327). This is consistent, we believe, both with past practice and with the statement of the Court of International Trade in *Connors Steel Company* v. *United States* (——CIT——, Slip Op. 81–110, November 24, 1981). We invite comments from interested parties on this approach and methodology. We also deducted home market selling expenses and added those expenses incurred in selling the subject merchandise to the United States. After ascertaining that the amount for general expenses was greater than the statutory minimum of 10 percent of the costs of materials and fabrication, we added the statutory minimum of 8 percent of the sum of the actual general expenses and costs as the amount for profit usually reflected in sales of the subject merchandise by manufacturers in the country of exportation, since Nuova Italsider S.p.A. did not report any profit. To this sum we added the cost of packing.

Because Teksid S.p.A. did not respond to our questionnaire on cold-rolled carbon steel sheet and strip, we based our comparisons on the best information available as required by section 776(b) of the Act. In this investigation, the best information available is price and cost data submitted by United States Steel Corporation because it is more adverse to Teksid S.p.A. than the price and cost data submitted by Bethlhem Steel Corporation.

Supplemental Information Requested

On February 8, 1982, we presented Teksid S.p.A. with a questionnaire on cold-rolled carbon steel sheet and strip and hot-rolled carbon steel sheet and strip. We explained to Teksid S.p.A. that without this information, we would have to make our determinations on the basis of the best information available. In letters of March 24, 1982 and March 30, 1982, we urged this firm to respond to our questionnaire. On April 30, 1982, we informed Teksid S.p.A. in writing that if a response to our questionnaire was not received, we might have to use the best information available. These communications went unanswered.

We shall no longer require Teksid S.p.A. to furnish information on sales of hot-rolled carbon steel sheet and strip. We have now determined that Nuova Italsider S.p.A. accounts for virtually all of the sales of this merchandise to the United States during the period of investigation.

We will once again ask Teksid S.p.A. to provide information on sales of cold-rolled carbon steel sheet and strip. If this information is not submitted by September 1, 1982, we will be unable to verify it. We will take into account for our final determination any additional information submitted on or before September 1, 1982, which is subsequently verified. The verification of this information could substantially change the sales at less than fair value margin calculated in this preliminary determination for Teksid S.p.A. on cold-rolled carbon steel sheet and strip. Where information is not furnished, or furnished too late to verify, we may use best information available for our final determination.

We are also requesting Nuova Italsider S.p.A. to provide us with clarifying information concerning labor, processing, and allocation of costs as well as specific components of selling, general, and administrative expenses. We consider the additional information requested as necessary refinements of data contained in the response. If this supplemental information is not received by September 1, 1982, we may use only some or none of the information already received relative to production costs in making our final determinations. In that instance, we may resort to using the best information available for our final determinations.

Negative Determinations of Critical Circumstances

Counsel for Bethlehem Steel Corporation alleged that imports of all steel products under investigation present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist when there is a reasonable basis to believe or suspect that: (1) There have been massive imports of the merchandise under investigation over a relatively short period; and (2) (a) there is a history of dumping in the U.S. or elsewhere of the merchandise under investigation, or (b) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise under investigation at less than its fair value.

In determining whether there is a reasonable basis to believe or suspect that there have been massive imports over a relatively short period, we considered the following factors: recent import penetration levels; changes in import penetration since the date of the ITC's preliminary affirmative determinations of injury; whether imports have surged recently; whether recent imports are significantly above the average calculated over the last 3½ years (January 1979–June 1982); and whether the pattern of imports over that 3½ year period may be explained by seasonal swings. Based upon our consideration, we have determined that in the context of the steel industry, imports of the products covered by these investigations do not appear massive over a relatively short period (March through June 1982). Therefore, critical circumstances do not exist in these cases.

Verification

We will verify all data used in reaching final determinations in these investigations.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of cold-rolled carbon steel sheet and strip and hot-rolled carbon steel sheet and strip from Italy subject to these investigations which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to these investigations exceeds the United States price. The suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Product	Weighted-average margin (percent)
Cold-rolled carbon steel sheet and strip:	
Nuova Italsider S.p.A.	9.72
Teksid S.p.A.	40.78
Other manufacturers/producers/exporters	9.72
Hot-rolled carbon steel sheet and strip:	
Nuova Italsider S.p.A.	2.07
Other manufacturers/producers/exporters	2.07

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administratie protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with § 353.47 of the Commerce Department regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 2:00 p.m. on September 8, 1982, at the United States Department of Commerce, Room 3080, 14th and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by September 1, 1982. Oral presentations will be limited to issues raised in the briefs. All written views

should be filed in accordance with 19 CFR 353.46, within thirty days of publication of this notice, at the above address and in at least ten copies.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

August 9, 1982.

[FR Doc. 82-22106 Filed 8-13-82; 8:45 am]

BILLING CODE 3510-25-M

Preliminary Determination of Sales at Not Less Than Fair Value: Carbon Steel Structural Shapes From Luxembourg

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Carbon Steel Structural Shapes From Luxembourg.

SUMMARY: We have preliminarily determined that carbon steel structural shapes from Luxembourg are not being sold, or are not likely to be sold, in the United States at less than fair value. We have notified the United States International Trade Commission (ITC) of our determination. We found a weighted-average margin of 0.46 percent for exports of carbon steel structural shapes which is *de minimis*.

If this investigation proceeds normally, we will make a final determination by October 25, 1982.

EFFECTIVE DATE: August 16, 1982.

FOR FURTHER INFORMATION CONTACT: Michael J. Altier, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-1785.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that there is no reasonable basis to believe or suspect that carbon steel structural shapes from Luxembourg are being sold, or are likely to be sold, in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act).

We have found that the foreign market value for Acieries Reunies de Burbach-Eich-Dudelange S.A. (ARBED), the single producer investigated, exceeded the United States price on 8.95 percent of sales. These margins ranged from 0.00 percent to 28.83 percent. The weighted-average margin on all sales compared is 0.46 percent which is *de minimis*.

If this investigation proceeds normally, we will make a final determination by October 25, 1982.

Case History

On January 11, 1982, we received petitions from the United States Steel Corporation and counsel for Bethlehem Steel Corporation, filed on behalf of the United States industry producing certain steel products. The petitioners alleged certain steel products from Luxembourg are being, or are likely to be, sold in the United States at less than fair value, and that such sales are materially injuring, or are threatening to materially injure, a United States industry. Counsel for Bethlehem Steel Corporation also alleged that sales in the home market and to third countries were at prices below the cost of production, and that "critical circumstances," as defined in section 733(e) of the Act, exist in this case.

After reviewing the petitions, we determined they contained sufficient grounds to initiate an antidumping investigation. We notified the ITC of our action and initiated such an investigation on February 1, 1982 (47 FR 5749). The ITC subsequently found, on February 26, 1982, that there is a reasonable indication imports of carbon steel structural shapes are materially injuring, or are threatening to materially injure, a United States industry. We determined this case to be "extraordinarily complicated," as defined in section 733(c) of the Act. Therefore, we extended the period for making a preliminary determination by 50 days until August 9, 1982 (47 FR 23508).

A questionnaire was presented to ARBED on February 15, 1982. A response was received on April 30, 1982.

Scope of Investigation

The product covered by this investigation is carbon steel structural shapes. The product is fully described in Appendix A which appears with the notice of "Preliminary Determinations of Sales at Less Than Fair Value: Certain Steel Products from Belgium" in this issue of the **Federal Register.**

Since ARBED produces approximately 90 percent of the carbon steel structural shapes exported from Luxembourg to the United States, we limited our investigation to that company.

This investigation covers period April 1 to September 30, 1981.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by ARBED because the merchandise was sold to unrelated purchasers prior to its importation into the United States. Where applicable, ARBED's price to unrelated exporters who resell the merchandise to United States importers was used to represent purchase price, since ARBED knows at the time of the sale that the merchandise is destined for the United States.

We calculated the purchase price based on the f.o.b., c.&f., c.i.f. or c.i.f., duty paid prices to unrelated customers in the United States or to unrelated exporters who resell the carbon steel structural shapes to United States importers. Where appropriate, we made deductions for foreign inland freight, ocean freight, marine insurance, customs brokerage in the United States, and United States duty. We did not add packing costs because the steel is sold unpacked.

Foreign Market Value

In accordance with section 773 of the Act, we calculated foreign market value based on sales to a third country, or, where appropriate, on constructed value. For purposes of determining similar merchandise under section 771(16) of the Act, we made comparisons based on dimensional categories selected by a Commerce Department industry expert.

We determined that there were insufficient sales of such or similar merchandise in the home market, therefore, sales to third countries were examined. We selected sales to the Federal Republic of Germany (FRG), because the carbon steel structural shapes exported to the FRG had a greater degree of similarity to the structural shapes exported to the United States than those exported to other countries, and the volume of sales to the FRG was adequate.

Counsel for Bethlehem Steel Corportation alleged sales to third countries were at prices below the cost of producing carbon steel structural shapes. We examined production costs, including materials, labor and general expenses. To avoid possible double counting, we have subtracted from the reported costs of production, certain production costs apparently absorbed by the government in the form of grants. These grants were preliminarily

determined to be subsidies in the recent notice of "Preliminary Affirmative Countervailing Duty Determination Carbon Steel Structural Shapes from Luxembourg" (47 FR 26331). This is consistent, we believe, both with past practice and with the statement of the Court of International Trade in *Connors Steel Company* v. *United States* (CIT , Slip Op. 81–110, November 24, 1981). We invite comments from interested parties on this approach and methodology.

We found sales of certain categories of carbon steel structural shapes were made at less than cost over an extended period of time, in substantial quantities and at prices not permitting recovery of all costs within a reasonable period of time. Consequently, we could not use sales in the FRG to determine foreign market value for certain categories of carbon steel structrual shapes. Therefore, we used constructed value. For all other categories, there were sufficient sales at or above cost. Therefore, for these cases we used sales prices to the FRG to determine foreign market value.

We calculated third country prices on the basis of the ex-customer's warehouse, ex-railroad car, or ex-barge price by deducting, where appropriate, inland freight. ARBED made claims for two circumstances of sale adjustments: advertising expenses and technical services expenses. For the advertising expenses, ARBED did not specify if these expenses were attributable to a later sale of the merchandise by a purchaser. ARBED also did not sufficiently describe its technical services expenses for us to determine if these expenses were directly related to the sales under consideration. We will seek more information concerning these expenses prior to making a final determination.

We calculated constructed value by adding the costs of materials, fabrication, general expenses, and profit. For materials and fabrication, we used ARBED's actual cost figures. In cases in which the actual general expenses were less than the statutory minimum amount of ten percent of the total cost for materials and fabrication, we used the statutory minimum of ten percent. Where actual expenses exceeded the statutory minimum of ten percent, we used the actual amounts. We calculated profit on the basis of the statutory minimum of eight percent of materials, fabrication and general expenses. We did not add packing since merchandise sold to the United States was sold unpacked. We subtracted the value of grants, as described above.

Supplemental Information Requested

We are requesting ARBED to provide us with all the FRG sales information which was not contained in their response. Although the response was incomplete in this regard, we received 83 percent of the sales data, which we considered sufficient in this case for purposes of our preliminary determination. In addition, we are requesting further information from ARBED on the two circumstances of sale adjustments which it claimed, advertising and technical services expenses. If the above supplemental information is not received by September 1, 1982, we may use only some or none of the partial information in making our final determination. In these instances, we may resort to using the best information available for our final determination.

Allegations of Critical Circumstances

Petitioners alleged that imports of the product subject to this investigation present critical circumstances, as defined by section 733(e) of the Act. Since we have preliminarily determined carbon steel structural shapes have not been sold in the United States at less than fair value, the issue of "critical circumstances" is moot in this determination.

Verification

We will verify all data used in reaching a final determination in this investigation.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination.

Public Comment

In accordance with § 353.47 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 3:00 p.m. on September 7, 1982, at the United States Department of Commerce, Room 6802, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by August 31, 1982. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within thirty days of publication of this notice, at the above address and in at least ten copies.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

August 9, 1982.

[FR Doc. 82–22107 Filed 8–13–82; 8:45 am]

BILLING CODE 3510–25–M

Preliminary Determinations of Sales at Not Less Than Fair Value: Certain Steel Products From the Netherlands

AGENCY: International Trade Administration, Commerce.

ACTION: Preliminary Determinations of Sales at Not Less Than Fair Value: Certain Steel Products from The Netherlands.

SUMMARY: We have preliminarily determined that hot-rolled carbon steel sheet and strip and cold-rolled carbon steel sheet from the Netherlands are not being sold, or are not likely to be sold, in the United States at less than fair value. We have notified the United States International Trade Commission (ITC) of our determinations. We found weighted-average margins of 0.003% for exports of hot-rolled carbon steel sheet and strip and 0.37% for exports of cold-rolled carbon steel sheet. These margins are *de minimis*.

If these investigations proceed normally, we will make final determinations by October 25, 1982.

EFFECTIVE DATE: August 16, 1982.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Telephone: (202) 377–2438.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

We have preliminarily determined that there is no reasonable basis to believe or suspect that hot-rolled carbon steel sheet and strip and cold-rolled carbon steel sheet from the Netherlands are being sold, or are likely to be sold, in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The only producer of the subject merchandise in the Netherlands, ESTEL Hoogovens B.V. (Hoogovens), had dumping margins on a small percentage

of their sales. However, the weighted-average margins for both products are *de minimis:*

- Hot-rolled carbon steel sheet and strip—0.003 percent
- Cold-rolled carbon steel sheet—0.37 percent

If these investigations proceed normally, we will make final determinations by October 25, 1982.

Case History

On January 11, 1982, we received petitions from United States Steel Corporation and counsel for Bethlehem Steel Corporation filed on behalf of the United States industry producing certain steel products. The petitioners alleged that certain steel products from the Netherlands are being sold, or are likely to be sold, in the United States at less than fair value, and that such sales are materially injuring, or threatening to materially injure, a United States industry. The petitioners also alleged sales in the home market at prices below the cost of production, and that "critical circumstances," as defined in section 733(e) of the Act, exist in these cases.

After reviewing the petitions, we determined that they contained sufficient grounds to initiate antidumping investigations. We notified the ITC of our actions and initiated such investigations on February 1, 1982 (47 FR 5743). The ITC subsequently found, on February 26, 1982, that there is a reasonable indication that imports of hot-rolled carbon steel and strip and of cold-rolled carbon steel sheet are materially injuring, or are threatening to materially injure, a United States industry. We determined these cases to be "extraordinarily complicated," as defined in section 733(c) of the Act. Therefore, we extended the period for making preliminary determinations by 50 days until August 9, 1982 (47 FR 23508).

Scope of Investigations

The products covered by these investigations are:

- Hot-rolled carbon steel sheet and strip
- Cold-rolled carbon steel sheet

The products are fully described in Appendix A which appears with the notice of "Preliminary Determinations of Sales at Less Than Fair Value: Certain Steel Products from Belgium" in this issue of the **Federal Register.**

Since Hoogovens produces virtually all the merchandise subject to these investigations exported from the Netherlands to the United States, we limited our investigations to that company.

These investigations cover the period from April 1 to September 30, 1981, for purchase price sales, and from July 1 to December 31, 1981, for exporter's sales price transactions.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used either the purchase price or the exporter's sales price of the subject merchandise to represent the United States price. We used purchase price to represent the United States price when the merchandise was sold to unrelated purchasers prior to its importation into the United States. We used exporter's sales price (ESP) when the merchandise was sold to unrelated purchasers in the United States after the date of importation.

We calculated the purchase price based on the c.i.f., duty paid, packed price to an unrelated purchaser in the United States. ESP was based on the packed price from Hoogovens' U.S. affiliates, NVW (USA) and Capital Metals, to the first unrelated purchaser in the United States. Where applicable, deducations were made for ocean freight, insurance, foreign inland freight, loading charges, United States duty, and tolls. When we used ESP, we made additional deductions for U.S. inland freight, unloading charges, credit costs, other selling expenses, and, where appropriate, warranty expenses and the increased value resulting from further processing by a subsidiary in the United States.

Foreign Market Value

In accordance with section 773 of the Act, we used home market prices where there were sufficient home market sales to determine foreign market value. Where there were no sales or insufficient sales of such or similar merchandise in the home market at or above cost, we used constructed value. When we made comparisons based on home market prices, we used dimensional categories selected by a Commerce Department industry expert to determine similarity of merchandise under section 771(16) of the Act.

The petitioners alleged that sales in the home market were made at prices below the cost of producing hot-rolled carbon steel sheet and strip and cold-rolled carbon steel sheet. We examined production costs including materials, labor, and general expenses. For Hoogovens, to avoid possible double-counting, we subtracted from the reported costs of production certain production costs apparently absorbed by the government in the form of grants. These grants were preliminarily determined to be subsidies in the recent notice of "Preliminary Affirmative Countervailing Duty Determinations Certain Steel Products from the Netherlands" (47 FR 26335). This is consistent, we believe, both with past practice and with the statement of the Court of International Trade in *Connors Steel Company v. United States* (— CIT ?, Slip Op. 81–110, November 24, 1981). We invite comments from interested parties on this approach and methodology.

We found sales of hot-rolled carbon steel sheet in coils (pickled and oiled) and of cold-rolled carbon steel sheet in coils in the home market were made at less than cost, over an extended period of time, in substantial quantities, and at prices not permitting recovery of all costs within a reasonable period of time. Consequently, we could not use sales in the home market of the above mentioned types of carbon steel sheet to determine the foreign market value. Therefore, we used constructed value.

The home market prices were based on the f.o.b., f.o.r., or f.o.t., packed price to unrelated purchasers. We made deductions, where appropriate, for discounts and inland freight. We also made adjustments, where appropriate, for differences in credit costs, warranty expenses, differences in merchandise, and packing costs. Adjustments for differences in merchandise were based on differences in the cost of materials and direct labor. An adjustment for differences in direct factory overhead could not be verified and was not allowed. However, where we compared exporter's sales price with the home market price, we treated adjustments for credit costs and warranty expenses as deductions. In addition, indirect selling expenses were deducted to offset United States selling expenses.

We calculated constructed value by adding the cost of materials and of fabrication, general expenses, profit, and the cost of packing in accordance with section 773(e) of the Act. We deducted home market selling expenses and added those expenses incurred in selling the subject merchandise to the United States. After ascertaining that the amount for general expenses was greater than the statutory minimum of 10 percent of the costs of materials and fabrications, and since Hoogovens' reported profit on home market sales was lower than the statutory minimum,

we added the statutory minimum of 8 percent of the sum of the actual general expenses and costs as the amount for profit usually reflected in sales of the subject merchandise by manufacturers in the country of exportation. In addition, we subtracted the value of grants, as described above.

Critical Circumstances

The petitioners alleged imports of certain steel products from the Netherlands present "critical circumstances." Since we have preliminarily determined the subject merchandise has not been sold in the United States at less than fair value, the issue of "critical circumstances" is moot in these preliminary determinations.

Verification

For purposes of these preliminary determinations, we verified cost of production data, sales data, and information relative to adjustments claimed by Hoogovens, by using standard verification procedures, including on-site inspection of the exporter's operations and examination in accounting records and selected documents containing relevant information. We did not verify data specifically concerning ESP sales. In accordance with 776(a) of the Act, we will verify all data used in reaching final determinations in these investigations.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determinations.

Public Comment

In accordance with section 353.47 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 10:00 a.m. on September 9, 1982, at the United States Department of Commerce, Room 6802, 14th Street and Constitution Avenue NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by September 2, 1982. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within thirty days of publication of this notice, at the above address and in at least ten copies.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

August 9, 1982.

[FR Doc. 82-22108 Filed 8-13-82; 8:45 am]

BILLING CODE 3510-25-M

Preliminary Determination of Sales at Less Than Fair Value: Carbon Steel Plate From Romania

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Determination of Sales at Less Than Fair Value: Carbon Steel Plate From Romania.

SUMMARY: We have preliminarily determined that carbon steel plate from Romania is being sold, or is likely to be sold, in the United States at less than fair value. Therefore, we have notified the United States International Trade Commission (ITC) of our determination, and we have directed the United States Customs Service to suspend the liquidation of all entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. We have detemined that "critical circumstances" do not exist in this case. If this investigation proceeds normally, we will make a final determination by October 25, 1982.

EFFECTIVE DATE: August 16, 1982.

FOR FURTHER INFORMATION CONTACT: Raymond G. Busen, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street & Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377-1784.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined there is a reasonable basis to believe or suspect that carbon steel plate from Romania is being sold, or is likely to be sold, in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act).

For the carbon steel plate sold by Metalimportexport, the only exporter of the subject merchandise, we have found that the foreign market value exceeded the United States price on 16 of the 17 sales. These margins ranged from 6.6 percent to 21.1 percent. The weighted-average margin on all sales compared is 13.2 percent.

If this investigation proceeds normally, we will make a final determination by October 25, 1982.

Case History

On January 11, 1982, we received petitions from United States Steel Corporation, and counsel for Republic Steel Corporation, Inland Steel Corporation, Jones & Laughlin Steel Incorporated, National Steel Corporation and Cyclops Corporation (the Five), filed on behalf of the United States industry producing certain steel products. The petitions alleged certain steel products from Romania are being sold in the United States at less than fair value, and that such sales are materially injuring, or are threatening to materially injure, a United States industry. On January 26, 1982, the Five withdrew their petitions on carbon steel structural shapes, hot-rolled carbon steel bars, hot-rolled alloy steel bars, cold-formed carbon steel bars, and cold-formed alloy steel bars. On January 31, 1982, the Five withdrew their petition on galvanized carbon steel sheet. Counsel for the Five also alleged that "critical circumstances," as defined in section 733(e) of the Act, exist in this case.

After reviewing the petitions, we determined they contained sufficient grounds to initiate an antidumping investigation on hot-rolled carbon steel plate. We notified the ITC of our action and initiated such an investigation on February 1, 1982 (47 FR 5752). Concurrent with our initiation, we dismissed the Five's petitions with respect to hot-rolled carbon steel sheet and cold-rolled carbon steel sheet because there had been *de minimis* imports of those products in recent years, and no evidence had been provided of bona fide offers on merchandise for export to the United States. The ITC subsequently found, on February 26, 1982, that there is a reasonable indication these imports of carbon steel plate are materially injuring, or are threatening to materially injure, a United States industry. We determined this case to be "extraordinarily complicated," as defined in section 733(c) of the Act. Therefore, we extended the period for making a preliminary determination by 50 days until August 9, 1982 (47 FR 23509).

On July 22, 1982, the Court of International Trade in *Republic Steel Corp., et al.* v. *United States* (Slip Op. 82–58) ordered the Department to initiate investigations with respect to hot-rolled carbon steel sheet and cold-rolled carbon steel sheet from Romania. Unless the Court's order is stayed pending appeal, we will begin investigations concerning these products. In the meantime, we will continue the investigation of carbon steel plate initiated on February 1, 1982.

Questionnaries were presented to Rautaruukki Oy (see the "Foreign Market Value" section of this notice) on May 10, 1982, and to the respondent, Metalimportexport, on May 13, 1982. Responses were received from Rautaruukki Oy on June 1, 1982, and from Metalimportexport on June 14, 1982.

Scope of Investigation

The product covered by this investigation is carbon steel plate. The product is fully described in Appendix A which appears with the notice of "Preliminary Determinations of Sales at Less Than Fair Value: Certain Steel Products from Belgium" in this issue of the **Federal Register.**

Since Metalimportexport is the only exporter of carbon steel plate from Romania to the United States, we limited our investigation to that firm.

This investigation covers the period from April 1 through September 30, 1981.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for sales by Metalimportexport because the merchandise was sold to the unrelated purchaser prior to its importation into the United States.

We calculated the purchase price based on the c. & f. or f.o.b. price to an unrelated Swiss commission agent. Where appropriate, we made deductions for commissions, ocean freight, a toll charge, and stowage and dunnage. We did not add packing costs because the steel is sold unpacked. This price is reflective of purchase price since the Romanian exporter knows at the time of the sale that the merchandise is destined for the United States.

Foreign Market Value

In accordance with section 773 of the Act, we used home market prices in a surrogate country to determine foreign market value. Petitioners alleged that Romania's economy was state-controlled to the extent that sales of merchandise from that country did not permit a determination of foreign market value based on Romanian prices or constructed value. Counsel for Metalimportexport alleged that the "available information" demonstrates that Romania is not state-controlled to the extent that Metalimportexport's third country export prices cannot provide an acceptable basis for determining foreign market value. After an analysis of the Romanian economy, and careful consideration of the briefs and materials submitted by the parties, the Commerce Department concluded that Romania is a state-controlled economy for purposes of this investigation. Accordingly, the same factors which cause disqualification of Metalimportexport's home market sales in Romania also cause disqualification of their third country sales. Some of the factors involved in determining the state-control issue are as follows:

1. Central governmental authorities make all major production and investment decisions. Central authorities also fix prices and control the activities of enterprises.

2. Wages are determined by law. All wages and wage classifications, including those for the steel industry, are clearly spelled out with ceilings for each occupation.

3. All major investment decisions, including those in the steel industry, are made by central governmental authorities and are the basis for implementing projects drawn up at the ministry level.

As a result, section 773(c) of the Act requires us to use prices or the constructed value of such or similar merchandise in a "non-state-controlled-economy" country. Our regulations establish a preference for foreign market value based upon sales prices. They further stipulate that, to the extent possible, we should determine sales prices on the basis of prices in a "non-state-controlled-economy" country at a stage of economic development comparable to the country with the state-controlled economy.

Since information necessary to perform our analysis was not obtainable or usable from any country considered to be at a comparable stage of economic development, we had to select a second group of potential surrogates whose economies, while more advanced than Romania's economy, could still serve as a surrogate under section 773(c) of the Act.

We looked at these countries from a perspective of both economic and technological development of their steel sectors. We found that a producer in Finland, Rautaruukki Oy, has a steel mill which is very similar in technology and age to Romania's Galati mill where the subject merchandise is produced. Both the government of Finland and Rautaruukki Oy said they would assist us. Therefore, we selected Finland as the surrogate country and used the sales prices of carbon steel plate produced by Rautaruukki Oy.

We calculated the foreign market value by taking the net basis price of Finnish carbon steel plate, European grade Fe–37–B, and adding a quality extra and a size extra to make it comparable to the basis price of the Romanian plate, United States grade A–36. To determine appropriate size extras, we have used dimensional categories selected by a Commerce Department industry expert. We then deducted an amount for freight equalization because Rautaruukki Oy does not charge its home market customers for the full freight cost and for year-end rebates. We made adjustments for differences in credit costs, sales commissions, and warranty expenses. We also made an adjustment for Finnish packing costs because Romanian carbon steel plate is sold unpacked. This gave us the foreign market value in Finnish markka, which we converted into dollars to compare with the United States sales price. In making our comparisons, we used dimensional categories selected by a Commerce Department industry expert to determine similarity of merchandise under section 771 (16) of the Act.

Supplemental Information Requested

We are requesting that the producer in the surrogate country and the respondent provide us with information which was not contained in their responses. We used those responses because the information is sufficient upon which to make our preliminary determination. If, however, the supplemental information requested from the Romanian respondent is not received by September 1, 1982, we may use only some or none of the partial information received relative to United States sales in making our final determination. In that instance, we may resort to using the best information available for our final determination.

Finland—We have requested additional information from Rautaruukki Oy on the hourly labor costs relating to

stowage and dunnage. We have also requested supplemental information regarding the quantities of carbon steel plate sold in its home market during the investigative period according to various categories of steel sizes. For the purposes of computing a possible commission offset, we have requested that the Finnish firm provide us with its home market indirect selling expenses.

Romania—Metalimportexport has been requested to provide: (1) Supplemental information regarding order dates and price confirmations, such as agreements to purchase or other contractual documents, (2) clarification of certain aspects of the ocean freight charges, (3) additional information regarding commissions paid to middlemen, and (4) additional information on the number of labor hours relating to stowage and dunnage.

Negative Determination of Critical Circumstances

Counsel for the Five alleged that imports of the product subject to this investigation presents "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist when there is a reasonable basis to believe or suspect that: (1) There have been massive imports of the merchandise under investigation over a relatively short period; and (2) (a) there is a history of dumping in the United States or elsewhere of the merchandise under investigation, or (b) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise under investigation at less than its fair value.

In determining whether there is a reasonable basis to believe or suspect that there have been massive imports over a relatively short period, we considered the following factors: recent import penetration levels; changes in import penetration since the date of the ITC's preliminary affirmative determination of injury; whether imports have surged recently; whether recent imports are significantly above the average calculated over the last 3½ years (January 1979–June 1982); and whether the pattern of imports over that 3½ year period may be explained by seasonal swings. Based upon our consideration, we have determined that in the context of the steel industry, imports of the product covered by this investigation do not appear massive over a relatively short period (March through June 1982). Therefore, critical circumstances do not exist in this case.

Verfication

In accordance with section 776(a) of the Act, we verified, to the extent possible, information used in this preliminary determination. We were granted access to the books and records of Metalimportexport and Rautaruukki Oy. We used standard verification procedures, including examination of accounting records and selected documents containing relevant information. Some of the information used in this preliminary determination has not been verified.

Furthermore, we are seeking additional information. We will verify all data used in reaching a final determination in this investigation.

Suspension of Liquidation

In accordance with section 773(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of carbon steel plate from Romania subject to this investigation which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price. This suspension of liquidation will remain in effect until further notice. The weighted-average margin for carbon steel plate is 13.2 percent.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under and administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with section 353.47 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 2:00 p.m. on September 10, 1982, at the United States Department of Commerce, Room 4830, 14th Street and Constitution Avenue NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretay for Import Administration, Room 3099B, at the above address within ten days of this notice's publication. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least ten copies must be submitted to the Deputy Assistant Secretary by September 3, 1982. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within thirty days of publication of this notice, at the above address in at least ten copies.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

August 9, 1982.

[FR Doc. 82-22109 Filed 8-13-82; 8:45 am]

BILLING CODE 3510-25-M

Preliminary Determinations of Sales at Less Than Fair Value: Certain Steel Products From the United Kingdom

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Preliminary Determinations of Sales at Less than Fair Value: Certain Steel Products from the United Kingdom.

SUMMARY: We have preliminarily determined that certain steel products from the United Kingdom are being sold, or are likely to be sold, in the United States at less than fair value. Therefore, we have notified the United States International Trade Commission (ITC) of our determinations. We have directed the U.S. Customs Service to suspend the liquidation of all entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice and to require a cash deposit or bond for each such entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice. We have determined that "critical circumstances" do not exist in these cases. If the investigations proceed normally, we will make final determinations by October 25, 1982.

EFFECTIVE DATE: August 16, 1982.

FOR FURTHER INFORMATION CONTACT: Brian Kelly, Office of Investigations, Import Administration, International Trade Administration, U.S. Department

of Commerce, 14th Street & Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377–2923.

SUPPLEMENTARY INFORMATION:

Preliminary Determinations

We have preliminarily determined that there is a reasonable basis to believe or suspect that certain steel products from the United Kingdom are being sold, or are likely to be sold, in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act).

For carbon steel structural shapes we have found that the foreign market value exceeded the United States price on 75% of sales. These margins ranged from zero to 45.84%. The overall weighted-average margin on all sales compared is 10.61%.

For hot-rolled carbon steel plate we have found that the foreign market value exceeded the United States price on 90% of sales. These margins ranged from zero to 148.09%. The weighted-average margin on all sales compared is 18.84%.

The weighted-average margins for individual companies investigated are given for each product in the "Suspension of Liquidation" section of this notice.

If these investigations proceed normally, we will make final determinations by October 25, 1982.

Case History

On January 11, 1982, we received petitions from United States Steel Corporation and counsel for Bethlehem Steel Corporation, filed on behalf of the U.S. industry producing certain steel products. The petitioners alleged that certain steel products from the United Kingdom are being, or are likely to be, sold in the United States at less than fair value, and that such sales are materially injuring, or are threatening to materially injure, a U.S. industry. The petitioners also alleged sales in the home market at prices below the cost of production, and that "critical circumstances," as defined in section 733(e) of the Act, exist in these cases.

After reviewing the petitions, we determined that they contained sufficient grounds to initiate antidumping investigations. We notified the ITC of our actions and initiated such investigations on February 1, 1982 (47 FR 5747–8). The ITC subsequently found, on February 26, 1982, that there is a reasonable indication that imports of carbon steel structural shapes and hot-rolled carbon steel plate are materially injuring, or are threatening to materially injure, a U.S. industry. We determined these cases to be "extraordinarily complicated," as defined in section 733(c) of the Act. Therefore, we extended the period for making preliminary determinations by 50 days until August 9, 1982 (47 FR 23509).

Scope of Investigations

The products covered by these investigations are:

- Carbon steel structural shapes
- Hot-rolled carbon steel plate

The products are fully described in Appendix A which appears with the notice of "Preliminary Determinations of Sales at Less Than Fair Value: Certain Steel Products From Belgium" in this issue of the **Federal Register**.

Since British Steel Corporation (BSC) and Darlington-Simpson Rolling Mills (DSRM) produce all the carbon steel structural shapes, and BSC all the hot-rolled carbon steel plate, exported from the United Kingdom to the United States, we limited our investigations to them.

These investigations cover the period from April 1 to September 30, 1981, for purchase price sales, and from July 1 to December 31, 1981, for exporter's sales price transactions.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772 of the Act, we used the purchase price of the subject merchandise to represent the United States price for all sales by DSRM and a portion of the sales by BSC, because in these instances the merchandise was sold to unrelated purchasers prior to its importation into the United States. For the remainder of BSC's sales we used exporter's sales price, because the merchandise was sold to unrelated purchasers in the United States after the date of importation.

We calculated both purchase price and exporter's sales price on the basis of the ex-works, c.i.f., f.o.b., or delivered customer's works, packed or unpacked price to unrelated purchasers in the United States. We made deductions, where applicable, for foreign inland freight, U.K. f.o.b. charges, ocean freight, insurance, United States duty, brokerage, wharfage, loading, handling, U.S. inland freight, and discounts in the United States market.

Where we used exporter's sales price, we made additional deductions for warranty expenses and other selling expenses.

Foreign Market Value

In accordance with section 773 of the Act, we used home market prices where there were sufficient home market sales at or above cost of production to determine foreign market value. Where there were no or insufficient sales in the home market at prices at or above cost, or where there were no sales of such or similar merchandise, we used construced value. For purposes of determining such or similar merchandise under section 771 of the Act, we made comparisons for carbon steel structural shapes based on sales of identical merchandise in the home market. For certain special sections, however, we made our comparisons based on dimensional categories selected by a Commerce Department industry expert.

The petitioners alleged that sales in the home market were at prices below the cost of producing carbon steel structural shapes and hot-rolled carbon steel plate. We examined production costs, including materials, labor and general expenses. BSC claimed a reduction in the cost of production of hot-rolled carbon steel plate based on an unusual activity variance. We disallowed the claim because BSC failed to provide an allocation of the variance over a longer period, and did not demonstrate that the variance was in fact unusual. To avoid possible double-counting, we have allowed BSC's and DSRM's reduction of cost of production for certain production costs apparently absorbed by the government in the form of grants. These grants were preliminarly determined to be subsidies in our recent notice of "Preliminary Affirmative Countervailing Duty Determination Certain Steel Products from the United Kingdom" (47 FR 26343). This is consistent, we believe, both with past practice and with the statement of the Court of International Trade in *Connors Steel Company v. United States* (—— CIT ——, Slip Op. 81–110, November 24, 1981). We invite comments from interested parties on this approach and methodology.

We found sales of hot-rolled carbon steel plate were made at less than cost over an extended period of time, in substantial quantities and at prices not permitting recovery of all costs within a reasonable period of time. Consequently, we could not use sales in the home market to determine the foreign market value of hot-rolled carbon steel plate. Therefore, we used constructed value. Sufficient sales of carbon steel structural shapes were made in the home market at or above cost. Therefore, we used home market

prices to determine foreign market value except in the case of certain special sections. There were no comparable sales in the home market for these sections. Therefore, we used constructed value. The home market prices for BSC were based on BSC's ex-works, packed, list prices to unrelated purchasers. the home market prices for DSRM were based on delivered, packed prices to unrelated purchasers. From these prices, we deducted, where appropriate, U.K. inland freight, discounts, and rebates. Where applicable, we also made a deduction for the partial absorption of customer's freight costs by BSC. We made adjustments, where appropriate, for credit costs, warranty expenses, certain direct selling expenses, and differences in merchandise.

Where we compared exporter's sales price with foreign market value, we treated the credit expenses and warranty expenses as deductions, instead of adjustments for the differences, and deducted indirect selling expenses to offset United States selling expenses.

For BSC, an adjustment for differences in credit cost could not be verified and was not allowed. For DSRM, a claimed adjustment for direct selling expenses was disallowed, because on verification these expenses were determined not to be directly related to sales. Adjustments for differences in merchandise were based on differences in the costs of materials, direct labor, and directly related factory overhead. We disallowed a claim by DSRM that differences in merchandise should be based on the ratio between variable costs of manufacture of the merchandise sold in the home and United States markets. We disallowed a claim for an "inventory adjustment" by BSC because it was based on sales not in the ordinary course of trade.

In accordance with section 773 of the Act, for BSC we calculated constructed value for special sections and hot-rolled carbon steel plate by adding the cost of materials and of fabrication, general expenses, and profit. For materials and fabrication, we used BSC's actual cost figures. We deducted home market selling expenses and added those expenses incurred in selling the subject merchandise to the United States. The amount added for general expenses constituted the statutory minimum of ten percent of the sum of material and fabrication costs, since the actual expenses were less than the statutory minimum. Profit was calculated using the statutory minimum of eight percent of the sum of general expenses and costs since the actual profit was less than the statutory minimum. We did not add packing since merchandise sold to the United States was sold unpacked. We have allowed BSC's and DSRM's substraction for the value of grants, as described above.

Special Sections

BSC requested that special sections be excluded altogether from our investigation of carbon steel structural shapes from the United Kindgom. Alternatively, it requested a separate investigation of special sections, or a separate dumping margin for special sections within the investigation of structural shapes. The Department has declined the first request, on the grounds that petitioners intended special sections to be included, and that sufficient allegations and supporting information were provided to warrant initiation of an investigation that included special sections.

For purposes of this preliminary determination on structural shjapes, we are also declining BSC's alternative request, and are not treating special sections as a subclass with a separate dumping margin. However, we will seriously consider doing so in our final determination for the following reasons.

The Department has considerable discretion in defining the "class or kind" of merchandise subject to an investigation, and in determining whether to differentiate among products within that class or kind. The criteria used for class or kind determinations include, but are not limited to: The general physical characteristics of the merchandise, the expectations of the ultimate purchaser, the channels of trade in which the merchandise moves, the manner in which the merchandise is advertised and displayed, and the ultimate use of the merchandise. We believe that special sections may be considered within the same "class or kind" of merchandise as structural shapes.

- They are imported under the same TSUS categories as conventional structural shapes.
- They are extremely similar in physical characteristics to structural shapes (e.g., similar shapes, dimensions, weights, composition), and there is no apparent demarcation between special sections as a class and structurals. Both special sections and conventional structural shapes come in an unusual variety of shapes and sizes compared to flat plate products.
- Industry custom generally treats conventional structural shapes and special sections as in the same generic category. For example, the American Iron and Steel Institute's *"Steel Products Manual"* has one section on structural shapes, which are said to be "divided as follows: (r)egular shapes * * * (and) (s)pecial shapes."

In light of these facts, we are including special sections in the same class or kind of merchandise as structural shapes.

On the other hand, special sections can be distinguished from other structural shapes on several significant grounds.

- Special sections are custom designed steel products manufactured on a product-by-product basis in response to customer orders, using unique design specifications and custom rolls (often provided by the customer). Conventional structural shapes, on the other hand, are generally flanged steel shapes produced on standard rolls with contours described in the Standard Steel Custom Communications Systems nomenclature. They are designed to meet established commercial tolerance and quality specifications.
- Special sections are priced without reference to standard list prices for conventional structural shapes. Moreover, where the customers ordering special sections do not supply their own rolls, they normally pay all or part of the manufacturer's cost of the specially designed rolls needed to produce that customer's order. On the other hand, customers ordering conventional structural shapes are not normally required to pay any or all the cost of the standard rolls used to produce those shapes.
- The expectation of the purchasers of special sections is that they will receive a custom designed article, rather than a mass-produced article designed according to standard specifications.
- Special sections may move in a distinguishable channel of trade. They are not stocked in warehouse or otherwise accumulated in inventory. Instead they are produced only in response to a custom order.
- Special sections have largely different uses than structurals. They are generally used as equipment parts for heavy machinery, whereas conventional structural shapes are more frequently used in the construction of bridges and buildings. Even where they could conceivably be considered fungible, a purchaser would generally prefer to use a conventional structural shape where possible, in view of its probably lower

price (because of its mass manufacture).

Where a conventional structural shape is not satisfactory, however, a special section may be specifically ordered.

- Unlike conventional structural shapes, special sections are often extensively processed by the customer after receipt.

In considering for our final determination whether a separate margin should be published for special sections, we will apply the same criteria that are used in determining class or kind. The differences between products would not have to be as great by these criteria in publishing separate margins as in distinguishing class or kind. However, publication of separate margins within a class or kind would remain exceptional, and we would consider it only if the differences in merchandise were considerable.

Interested parties are expressly invited to comment on this issue.

Negative Determinations of Critical Circumstances

Counsel for Bethlehem Steel Corporation alleged that imports of all steel products under investigation present "critical circumstances." Under section 733(e)(1) of the Act, critical circumstances exist when there is a reasonable basis to believe or suspect that: (1) There have been massive imports of the merchandise under investigation over a relatively short period; and (2)(a) there is a history of dumping in the U.S. or elsewhere of the merchandise under investigation, or (b) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise under investigation at less than its fair value.

In determining whether there is a reasonable basis to believe or suspect that there have been massive imports over a relatively short period, we considered the following factors: Recent import penetration levels; changes in import penetration since the date of the ITC's preliminary affirmative determinations of injury; whether imports have surged recently; whether recent imports are significantly above the average calculated over the last 3½ years (January 1979–June 1982); and whether the pattern of imports over that 3½ year period may be explained by seasonal swings. Based upon our consideration, we determine that in the context of the steel industry, imports of the products covered by these investigations do not appear massive over a relatively short period (March through June 1982). Therefore, we determine critical circumstances do not exist in these cases.

Verification

We verified to the extent possible the information used in our preliminary determinations in computing foreign market value and certain information used in computing the United States price. We were granted access to the books and records of both manufacturers. We used standard verification procedures, including on-site inspections of the manufacturers' operations and examination of accounting records and selected documents containing relevant information. The verification of certain United States price data will occur after the publication of these preliminary results. In accordance with section 776(a) of the Act, we will verify all data used in making final determinations in these investigations.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of carbon steel structural shapes and hot-rolled carbon steel plate from the United Kingdom subject to these investigations which are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register.** The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average margin by which the foreign market value of the merchandise subject to these investigations exceeds the United States price. This suspension of liquidation will remain in effect until further notice. The weighted-average margins are as follows:

Weighted-Average Margins

	Percent
Carbon steel structural shapes:	
British Steel Corporation	10.61
Darlington-Simpson Rolling Mills	7.84
Other manufacturers/producers/exporters	10.61

Weighted-Average Margins—Continued

	Percent
Hot-rolled carbon steel plate: British Steel Corporation	18.84

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determinations. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to these investigations. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy for Policy to the Deputy Assistant Secretary for Import Administration.

Public Comment

In accordance with section 353.47 of the Commerce Department Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on these preliminary determinations at 10:00 a.m. on September 10, 1982, at the U.S. Department of Commerce, Room 4830, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy for Policy to the Deputy Assistant Secretary for Import Administration, Room 3099B, at the above address within ten days of publication for this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, prehearing briefs must be submitted in at least 10 copies to the Deputy for Policy to the Deputy Assistant Secretary by September 3, 1982. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within thirty days of publication of this notice, at the above address and in at least ten copies.

Judith Hippler Bello,

Deputy for Policy to the Deputy Assistant Secretary for Import Administration.

August 9, 1982.

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Part V

Department of Housing and Urban Development

Office of Assistant Secretary for Community Planning and Development

Community Development Block Grants; Subpart F—Small Cities Program

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R82-998]

Community Development Block Grants; Small Cities Program

AGENCY: Assistant Secretary for Community Planning and Development, HUD.

ACTION: Interim rule.

SUMMARY: This rule revises Subpart F of the Community Development Block Grant (CDBG) Program regulations in the States where HUD administers the Program, for nonentitlement areas (Small Cities Program), by establishing new policy and procedures and simplifying the application process. Substantial changes are made as follows: (1) Simplification of the selection system by—reducing the number of factors from 8 to 3, need and impact are retained while outstanding performance is reduced from 9 to 4 subfactors; benefit to lower income persons, Areawide Housing Opportunity Plan (AHOP), States rating, energy and other Federal program points are eliminated; (2) combination of metropolitan/non-metropolitan funding allocations; (3) deletion of "in behalf of" applications for counties and States; (4) simplification of the application process to one step and dropping the Housing Assistance Plan (HAP) requirement; (5) discontinuance of new multiyear commitments; (6) simplification of citizen participation (CP) requirements; and (7) deletion of A-95 clearinghouse review.

EFFECTIVE DATE: August 16, 1982.

Comment due date: September 30, 1982.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10278, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Helen Duncan or Bryant Monroe, Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, Washington, D.C. 20410, 202-755-6322. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: Under the CDBG Program, each State may now elect to administer all aspects of the Program for the nonentitlement communities within its jurisdiction. A new Subpart I to 24 CFR Part 570, applicable to State administered programs, was published on April 8, 1982 (47 FR 15290). HUD will continue to administer the Small Cities Program in those States that elect not to administer the Program. In keeping with recently enacted legislation that provides for greater flexibility in decisionmaking at the local level, the policies and procedures are simplified for those jurisdictions where HUD will administer the Program. The following paragraphs discuss revisions made in the regulations applicable to the HUD administered Small Cities Program.

Section 570.420 Scope and applicability.

The two separate funding areas for metropolitan and nonmetropolitan jurisdictions have been discontinued through legislative change. Competition will now be divided only into Comprehensive and Single Purpose grants.

The Program Design paragraph now requires that the projected use of funds must give maximum feasible priority to activities which will benefit lower income persons, or aid in the prevention or elimination of slums or blight; the projected use of funds may also include activities which the applicant certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community and where other financial resources are not available to meet such needs. The standards against which these activities will be measured are defined.

The Housing and Community Development Amendments of 1981 simplified the administration of the Community Development Block Grant program. It did not change the primary objective of the program, which is to provide "decent housing and a suitable living environment and expanding economic opportunities primarily for persons of low and moderate income." While prior regulations specifically stressed that programs should address needs of low and moderate income persons, it is the Department's view that it is possible to provide increased flexibility to the program, while still adhering to the primary objective of the statute as expressed in sec. 101(c) of the Housing and Community Development Act of 1974. The Department believes that a flexible program can best address the varied needs of smaller cities and will result in benefits primarily to low and moderate income persons. The Department intends to monitor the results of the program and will, if necessary, make such adjustments in the program structure as may appear necessary in order to further assure achievement of the purposes of the underlying statute.

Changes made by the Omnibus Budget Reconciliation Act of 1981 eliminated States as eligible applicants under the HUD administered program.

The rules for County participation have been revised. Counties may now submit either a Single Purpose or a Comprehensive application, but not both. A review of HUD's data base showed that not counties or States had been approved for both a Comprehensive grant and a Single Purpose grant in the same year and very few applied for both.

Having the two kinds of applications for counties, applications in their own behalf and applications in behalf of other units of general local government, led to data problems in defining which needs factors to use for the two different kinds of applications. All methods considered to apply the data resulted in some inequities. Therefore, a simplified approach to county applications and the associated needs data has been developed. Counties may now apply to undertake activities in either incorporated or unincorporated areas or both. Data used for county applicants will now be that of the entire county, minus the data attributable to each jurisdiction within the county which is eligible to an entitlement grant. Counties will continue to be ranked separately with regard to needs data but only for absolute poverty.

Communities which apply directly and which need assistance may contract with a county to design and/or administer a program.

The provision that allowed State agencies to update data statewide has been deleted because it was rarely used.

Section 570.421 Joint applicants.

This section formerly covered joint applications and applications by States and counties in behalf of one or more units of government. Please refer to discussions under .420. Counties may now submit only one application to undertake activities in incorporated and in unincorporated areas.

The joint applicant provision that allows units of general local government to file an application addressing a

common problem requiring mutual action by both jurisdictions is retained. The requirements of a cooperation agreement between participating jurisdictions that file a joint application is clarified.

Section 570.422 State participation.

Since each State now has the option of administering the Small Cities Program within its own jurisdiction, the State demonstration program is no longer necessary. This section is cancelled and reserved.

Section 570.423 Comprehensive grant program, general requirements.

The definition of a comprehensive program is modified. The requirement that applicants address a substantial portion of the identifiable community development needs within a defined concentrated area is changed to delete the work "concentrated." This decision reflects HUD's experience that the word "concentrated" was over-emphasized. A defined area is still required with certain special exceptions. Also the requirement that the program be developed through assessment of the applicant's community development, housing and economic needs is not fully consistent with the statutory changes, and has not been found by HUD to be a measurable indicator of a comprehensive program. Accordingly, it has been dropped as a requirement, but HUD would expect that most comprehensive program applications would be developed based on appropriate assessment of the community's needs.

The provision in the Act which previously permitted HUD to make multiyear commitments was deleted in the 1981 amendments. Also, because the law permits States the option to elect to administer the Small Cities Program each year, HUD is not able to continue making new multiyear commitments under the Comprehensive Grant Program. This section has been modified to remove the multiyear funding provision. In States in which HUD operates the program, HUD will continue to honor multiyear commitments made prior to fiscal year 1982 where the grantee meets the applicable requirements. States that elect to administer the Small Cities CDBG Program will honor those multiyear commitments made by HUD in fiscal years 1980 and 1981 if requested to do so by the recipient, and if HUD determines that the recipient has performed satisfactorily.

Although Housing Assistance Plans are no longer statutorily required of Small Cities Program applicants, applicants with previously-approved HAPs must have performed adequately under their HAPs. HUD will determine an applicant's performance adequate if it has met its HAP goals or, absent achievement of the goals, if it has used available housing assistance to meet the goals. In addition, any unit of general local government that takes an action that clearly prevents the provision of assisted housing to low and moderate income persons shall be considered to have performed inadequately, and shall be considered ineligible to apply for a grant under this Program until the community has taken corrective action.

An applicant may propose only activities which either benefit low and moderate income persons, or aid in the prevention or elimination of slums or blight, or meet other community development needs having a particular urgency, as defined in § 570.420(k). If in HUD's judgment, information in the application or other available data would indicate otherwise, additional information or justification may be requested.

Section 570.424 Selection system for comprehensive grants.

The selection system has been simplified and streamlined to maximize flexibility at the local decisionmaking level, while retaining HUD's capability to select the highest quality projects in the neediest communities.

The number of factors has been reduced from 8 to 3. The major selection factors retained are: the community's basic need, as measured by absolute and relative poverty; the impact the proposed program will have on the community's needs; and outstanding past performance in meeting basic national objectives in the area of fair housing and equal opportunity.

The second of 11 impact design criteria has been eliminated. The criterion dealt with housing opportunities on a regional basis and was rarely used. Criterion (x), now (ix), dealing with support of other Federal programs is expanded to include other State programs.

The awarding of points based on the percent of benefit to lower income persons factor has been deleted in order to provide communities greater flexibility in addressing locally identified needs and in choosing activities meeting one of the three broad national objectives which they determine to be the most appropriate means of addressing those needs. Communities are to give maximum feasible priority to activities which will benefit low and moderate income families, or aid in the prevention or elimination of slums or blight; or in certain cases, meet particularly urgent community development needs posing a serious and immediate threat to the community's health or welfare. Consistent with this rationale, the specific measure of benefit to low and moderate income persons is no longer a factor in the point system under § 570.424. Instead, impact will simply be measured against the identifiable needs in the community. HUD expects that in a competitive system which favors programs which have the greatest positive effect on meeting serious needs, lower income persons will continue to receive a high degree of benefit in conformity with the primary objective of the statute, but within a context in which communities have wide choice of activities to meet locally defined needs.

The outstanding performance factors have been simplified from nine separate subfactors to four, while still emphasizing the Department's priority areas of fair housing, minority business enterprise and local equal employment. The first two subfactors address fair housing. An applicant may receive 20 points by providing housing opportunities, and 20 points by implementing a HUD approved New Horizons project, or a fair housing strategy which is equivalent in scope. While enforcement of a fair housing ordinance has been deleted as a separate point factor, such enforcement usually is included as one of four basic elements of a New Horizons project or an acceptable fair housing strategy. One of the criteria the Department will consider in determining outstanding performance is the inclusion of a program for active enforcement of a local fair housing ordinance. An applicant may also obtain 15 points by meeting a specific standard in award of local contracts to minority businesses, and 10 points by effective affirmative action in local employment. The reduction in the number of subfactors makes the factors simpler and less likely to unfair disadvantage one class of communities over others while still rewarding the progress of communities in achieving national objectives.

The outstanding performance factors in the comprehensive selection system dropped are: Areawide Housing Opportunities Plan (AHOP) points; State's rating points; and energy conservation or production points. The overriding reason in dropping these points was simplification. In addition, the AHOP factor was found to be workable only in metropolitan areas and was dropped for nonmetropolitan areas in 1980. Since there will now be no distinction in competitive areas, i.e.,

metropolitan/nonmetropolitan, the AHOP factor becomes inappropriate. The State factor is no longer necessary since States have the option of managing the entire Small Cities Program. HUD Area Offices may, at their option, consult with States in considering the impact factor. The energy conservation and production factor proved to be hard to judge and confusing to applicants. Energy conservation and production can best be considered in the impact factor to the extent these issues reflect locally defined community development needs.

The procedural error process is retained. However, should the State elect to administer the program in the year following the procedural error, the State is encouraged, but is not required to recognize HUD's procedural error priority.

Sections 570.425 and 570.429 Preapplications for comprehensive and single purpose grants.

Since HUD has now established a one step application process, applicants will no longer file a preapplication. These sections are cancelled and reserved.

Section 570.426 Application requirements for comprehensive grants

These interim regulations also greatly simplify the application process because of statutory changes. HUD has eliminated the preapplication (formerly contained in §§ 570.425 and 570.429), and modified the application process to reflect the statutory description of a proposed and final application and the information which HUD field staff need to make funding decisions. Some information which is now unnecessary, including the HAP, is no longer a part of the application package. The new application is similar to the preapplication used in recent years, in that it includes instructions and forms to describe the community development programs that applicants are proposing to meet locally defined needs.

There are several reasons why HUD is modifying the application process. First, the new legislation simplifies or eliminates several components of the application process. The most important of these is the elimination of the HAP for nonentitlement communities, thus removing the major component of the full application. What remains of the full application is easily folded into a new, one-step submission. Second, the new one-step process eases the administrative bruden placed on local governments, and eliminates repetitious information requirements. Finally, eliminating the preapplication phase enables HUD to obligate Small Cities Program funds to grantees on an expedited basis because the Area Offices will no longer need time to review both preapplications and full applications, and the applicant will no longer require time to prepare both a preapplication and a full application.

Section 570.427 Single purpose grant program general requirements.

This section was modified to include the same requirements for comprehensive grant applicants in 570.423(c).

Section 570.428 Selection system for single purposes grants.

The basic changes described under 570.424 have also been made for the Single Purpose selection system. The discussion under 570.424 is applicable.

The levels of points for program impact which can be awarded to communities has been expanded from 4 to 5. The total is still 400, but levels are now 400 maximum, 300 substantial, 200 moderate, 100 minimal, and 0 for insignificant impact. The additional level in the impact factor allows for greater sensitivity to the variances in the quality of the proposed projects as they address the identified need.

Additionally, the "other Federal Program" factor has been deleted, principally in order to reduce the number of factors and to simplify the program. The degree to which a community's program impact can be improved by coordination with other Federal or State programs can be considered under the impact factor.

Section 570.430 Application for single purpose grants.

See § 510.426.

Section 570.431 Citizen participation requirements for comprehensive and single purpose grants.

Citizen participation requirements have been simplified through legislative change. The applicant must hold one or more public hearings to solicit citizen's views; provide citizens specific information; and publicize the proposed and final statement. HUD feels that momentum established by citizen groups will continue, and that established procedures will involve affected citizens in the community development process. Therefore, to continue to impose extensive requirements for citizen participation on applicants would be inappropriate.

Section 570.433 HUD review and actions on applicants for single purpose and comprehensive grants.

The simplification of the application process has significant impact upon the "HUD Review and Actions" section of the regulations. Because of these substantial procedural changes, this section has been reduced to a simple outline of the submission requirements, the review and notification time frames, the criteria for conditional approval of applications, and notification procedures for those applicants that cannot be funded.

Any multiyear applicants in the second or third year of their program will be funded without competition if their program performance is acceptable. All other acceptable applications are rated and reviewed during the rating process to determine that all activities are eligible. If the applicant has had prior grants, its performance must be judged acceptable. The applications are rated and ranked, and then funding is established to the extent of the availability of program funds. After Congressional notification, the area office notifies those applicants that rated high enough to be funded and forwards a grant agreement; the grant agreements may be conditioned upon the criteria listed in 570.433(b)(2).

Applicants that can not be funded will be notified that their application did not rank high enough for funding. If at a subsequent time during the year, additional funds become available either because Imminent Threat Grant funds are not distributed, or conditioned grantees do not meet the contract conditions, or other recaptured funds become available, these grantees may receive funding in the order of their ranking.

This section no longer includes criteria for disapproval (formerly 570.433(b)(3)), or the Letter to Proceed description (formerly 570.433(b)(4)). Both these steps became unnecessary with the advent of the one-step application process.

Section 570.434 Program amendments for single purpose and comprehensive grants.

This section is revised to conform to other modifications in the program, i.e., elimination of HAP requirements and A-95 review.

Section 570.435 Modified OMB circular No. A-95 procedures for the small cities program.

A-95 review is no longer statutorily required for the CDBG program. This section is cancelled and reserved.

However, continued contact by applicants and grantees with county, Regional, or State planning agencies for information and planning assistance is encouraged.

Section 570.436 Special procedures applicable to the Commonwealth of Puerto Rico.

The Commonwealth of Puerto Rico has elected to administer the program for nonentitled areas within the Commonwealth. Therefore, this section is cancelled and reserved.

Section 570.437 Applicability of 24 CFR Part 891.

The 1981 Amendments dropped the requirement for submission of a Housing Assistance Plan (HAP) as a condition of receiving a grant. Accordingly, the HAP section, § 570.437 is no longer necessary because it dealt with HAP content and review. Section 570.437 is now called "Applicability of 24 CFR Part 891" which deals with local review and comment and allocation of assisted housing. For purposes of 24 CFR Part 891, HAPs already approved remain in effect.

Section 570.438 Reallocated funds.

The 1981 Amendments simplified the reallocation process which determines how reallocated funds are distributed. This process was formerly governed by § 570.107, and is now covered in this Section (570.438). It states simply how these reallocated funds should be used, and the timing requirements where HUD is operating the program.

This rule was listed as item D)14.CPD–35–81 under the Office of Community Planning and Development in the Department's Semiannual Agenda of Regulations published on August 17, 1981 (46 FR 41708), pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Secretary has determined that, since this amendment implements statutory changes that became effective on October 1, 1981, and its promulgation is necessary to permit the processing and funding of Fiscal Year 1982 grant applications, it is in the public interest to have this amendment become effective as soon as possible. Accordingly, the Secretary has found that providing an opportunity for public comment prior to the effective date of the amendment would be impracticable and contrary to the public interest, and that good cause exists for publishing this amendment as an interim rule, to become effective upon publication.

However, the Department is soliciting post-publication comments from the public on this amendment. All comments received within the 45-day comment period following publication of the interim rule will be considered by the Department in preparation of the final rule implementing this amendment.

The Secretary has also determined that, for the reasons stated above, good cause exists for exempting the interim rule from the 30-day delay in effectiveness required by 5 U.S.C. 553(d).

In addition, the Chairmen and Ranking Minority Members of the Senate Committee on Banking, Housing and Urban Affairs, and the House Committee on Banking, Finance and Urban Affairs have, upon the Secretary's request, granted waivers, of the requirements of Section 7(o)(3) of the Department of HUD Act (42 U.S.C. 3535(o)(3)), which provides for a delay in effectiveness for a period of 30 calendar days of continuous session of Congress after publication, unless so waived. Accordingly, the interim rule is being published for immediate effect.

The granting of waivers, as described above, does not indicate approval of the regulations by Congress or the Committees or individual members granting them. Under Section 7(o)(5) of the Department of HUD Act, "Congressional inaction on any rule or regulation shall not be deemed an expression of approval of the rule or regulation involved." The foregoing provision refers to inaction on a joint resolution of disapproval or other legislation which is intended to modify or invalidate the rule or regulation or any portion thereof, and the principal that such inaction does not imply Congressional approval applies, a *fortiori*, to a waiver of the nature requested and granted in this instance.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned certifies that the rule does not have a significant economic impact on a substantial number of small entities.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10274, 451 Seventh Street SW., Washington, D.C. 20410.

The Small Cities Program is listed in the Catalog of Federal Domestic Assistance under the number 14.219, Community Development Block Grants/Small Cities Program.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting or recordkeeping provisions that are included in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 2506–0060.

List of Subjects in 24 CFR Part 570

Community development block grants, Grant programs: housing and community development, Loan programs: housing and community development, Low and moderate income housing, New communities, Pockets of poverty, Small cities.

Accordingly, Subpart F of 24 CFR Part 570 is revised to read as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

* * * * *

Subpart F—Small Cities Program

Sec.

570.420 General.
570.421 Applications from joint applicants.
570.422 [Reserved]
570.423 Comprehensive Grant program, general requirements.
570.424 Selection System for Comprehensive Grants.
570.425 [Reserved]
570.426 Applications for Comprehensive Grants.
570.427 Single Purpose Grant Program, general requirements.
570.428 Selection System for Single Purpose Grants.
570.429 [Reserved]
570.430 Applications for Single Purpose Grants.
570.431 Citizen Participation requirements for Comprehensive and Single Purpose Grants.
570.432 Single Purpose Grants for imminent threat to public health or safety.
570.433 HUD review and action on Applications for Single Purpose and Comprehensive Grants.
570.434 Program amendments for Single Purpose and Comprehensive Grants.
570.435 [Reserved]
570.436 [Reserved]
570.437 Applicability of 24 CFR Part 891.
570.438 Reallocation.

Subpart F—Small Cities Program

§ 570.420 General.

Under the Community Development Block Grant (CDBG) Program, each State may elect to administer all aspects of the Program for the nonentitlement areas within its jurisdiction. Subpart I of this Part 570, establishes the policies and procedures applicable where the State elects to administer the Program. This Subpart F sets forth policies and procedures applicable to grants for

nonentitlement areas in States which elect *not* to administer the funds.

(a) *Scope and applicability.* This Subpart describes the Small Cities Program's policies and procedures in those States where HUD will continue to administer the Program. The allocation of funds to States is as provided in Subpart A of this Part. Except as modified in this Subpart, the policies and procedures set forth in Subparts A, C, J, K, and O of this Part apply to the HUD administered Small Cities Program. The HUD Environmental Review Procedures contained in 24 CFR Part 58 also apply to this Subpart.

(b) *Program objectives.* The Small Cities Program provides grants to units of general local government in both metropolitan and nonmetropolitan areas to undertake the eligible community development activities listed in Subpart C of this Part. The Small Cities Program, however, is competitive in nature and the demand for funds far exceeds the amount available. Therefore, eligible applicants selected for funding will be those communities having the greatest need as evidenced by poverty and whose applications most adequately address locally determined needs.

(c) *Eligible applicants.* Eligible applicants are units of general local government, excluding: Metropolitan cities, urban counties, units of government which are participating in urban counties or metropolitan cities even if only part of the participating unit of government is located in the urban county or metropolitan city, and Indian tribes eligible for assistance under Section 107(a)(3) of the Act. An application may be submitted individually or jointly.

(d) *Types of grants.* Recognizing that needs of communities vary widely, the Small Cities Program has two types of grants—Comprehensive and Single Purpose.

(e) *Distribution of funds between Comprehensive Grants and Single Purpose Grants.* Before any applications are received, the Area Manager shall determine and make public the percentage of the Area Office's allocation that shall be provided for Single Purpose Grants, and the percentage that shall be provided for Comprehensive Grants. This determination of how funds will be distributed between Single Purpose and Comprehensive Grants shall be based on the following criteria:

(1) Whether the contemplated distribution will provide for a competition among applicants within each category;

(2) The needs expressed by eligible communities within the Area Office's jurisdiction; and

(3) Distribution between Single Purpose and Comprehensive Grants in prior years, and the success of those distributions in meeting the needs of the eligible communities within the Area Office's jurisdiction.

(f) *Size of grants. (1) Ceilings.* Each Area Office may establish general grant ceilings for both Single Purpose and Comprehensive Grants. Separate grant ceilings may be established for joint applicants.

(2) *Individual grant amounts.* Both Single Purpose and Comprehensive grants for specific grantees will be provided in amounts commensurate with the size of the applicant and the applicant's program. In determining appropriate grant amounts for each applicant, HUD may consider an applicant's population, need, proposed activities, ability to carry out the proposed program, and previous funding levels.

(g) *Restrictions on applying for grants.* Each applicant may apply for either a Comprehensive Grant or a Single Purpose Grant, but not both, in each fiscal year. For the purpose of this restriction, each unit of government participating in a joint application is considered to have applied for a grant. In addition, however, applicants may also apply for imminent threat grants as described in § 570.432.

(h) *Method of selecting grantees.* (1) *National selection system.* HUD has established national selection and rating systems for both Comprehensive and Single Purpose Grants which identify the criteria used in selecting grantees. Applicant's proposals are rated and ranked pursuant to §§ 570.424 or 570.428.

(2) *Application.* For the purpose of selecting grantees, HUD shall require all applicants to submit an application in a form prescribed by HUD. The application must include sufficient information to permit HUD to rate the application against the various selection criteria (except the needs factors described in § 570.424 (a) and (b) or in § 570.428 (a) and (b)), and must advise HUD of the source of information and the method used to compile the information for the application. Existing sources of information, such as area-wide analyses, State plans or needs assessments, and data from the Bureau of the Census should be used whenever possible. Local surveys may be necessary to document the information submitted in the application. Decisions made by HUD in selecting grantees are documented and will be made available to the public upon request.

(3) *Deadlines for submission.* HUD shall establish deadlines for submission of applications by publication of a Notice in the **Federal Register.**

(i) *Data used for the needs factors.* Data used in this Subpart with respect to the needs factors (§ 570.424(a)–(b) and § 570.428(a)–(b)) is from the United States Bureau of the Census. HUD uses the most recent Census data which is consistent as of the same point or period in time for all data elements in each needs factor and which can be applied to all potential applicants in the State. Data used for county applicants is that of the entire county, minus the data attributable to each jurisdiction within the county which is eligible to receive an Entitlement grant.

(j) *Previous audit findings and outstanding monetary obligations.* HUD shall not accept an application from an applicant that has an outstanding audit finding for any HUD program or has an outstanding monetary obligation to HUD. Additionally, HUD shall not accept an application from an applicant that includes activities in a unit of general local government that has an outstanding audit finding for any HUD program or has an outstanding monetary obligation to HUD. The Regional Administrator may provide waivers to this prohibition, but in no instance shall a waiver be provided when funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made.

(k) *Program design.* (1) Section 101(c) of the Act establishes as its primary objective "the development of viable urban communities, by providing decent housing and a suitable living environment, and expanding economic opportunities, principally for persons of low and moderate income." This overall objective is achieved through a program where the projected use of funds has been developed so as to give maximum feasible priority to activities which will benefit low- and moderate-income families or aid in the prevention or elimination of slums or blight; the projected use of funds may also include activities which the grantee certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. The choice of activities on which block grant funds are to be expended represents the determination by the applicant as to which approach or approaches will best serve these objectives. Each program or project must directly impact on the

applicant's identified need, as well as meet at least one of the broad national objectives described above.

(2) *Review for compliance with primary objectives. (i) Standards.* Consistent with the foregoing, each CDBG funded activity must meet one of the three national objectives. In determining whether each of the grantee's activities meets one of the broad national objectives contained in its certification, the Secretary will consider whether the activity meets one of the following standards:

(A) *Activities benefiting low- and moderate-income persons.* The following activities, in the absence of substantial evidence to the contrary, will be considered to benefit low- and moderate-income persons:

(*1*) Any activity, other than residential rehabilitation, which is so designed or so located that at least a majority of the beneficiaries are low- and moderate-income persons. The following are examples of activities which meet this standard:

(*i*) An activity, other than residential rehabilitation, which primarily serves an area, delineated by the recipient, where a majority of the residents are low- and moderate-income persons. Such an area need not be coterminous with census tract boundaries.

(*ii*) Economic development activities designed to create or retain permanent jobs, the majority of which are available or will be available to low- and moderate-income persons. Jobs are considered to be available to low- and moderate-income persons based on the nature and extent of the skills, education, and experience required to qualify for the jobs; training opportunities which would make such jobs available to low- and moderate-income persons who would not otherwise qualify; advertising and recruiting efforts directed toward low- and moderate-income persons; and the accessibility of the jobs to areas where substantial numbers of low- and moderate-income persons reside.

(*iii*) A facility, such as a senior center, which is used principally by low- and moderate-income persons.

(*iv*) An activity which has income eligibility requirements that limit the benefits of the activity to low- and moderate-income persons.

(*2*) A special project directed to removal of material and architectural barriers which restrict the mobility and accessibility of elderly or handicapped persons to publicly owned and privately owned buildings, facilities, and improvements.

(*3*) An activity which must be carried out prior to or as an integral part of an activity which will principally benefit low- and moderate-income persons. An example is the extension of water and sewer lines to permit construction of low-income housing. The cost of such activities must not be unreasonable in relation to the low- and moderate-income benefit to be provided.

(*4*) Rehabilitation of:

(*i*) Single-family residential structures occupied by low- and moderate-income households; or

(*ii*) Multi-family residential structures where more than half of the rehabilitated units in each structure are occupied by low- and moderate-income households.

Since rental units might not be occupied by the same households after rehabilitation as before rehabilitation, rental units affordable to low- and moderate-income households after rehabilitation will be considered occupied by such households for the purpose of meeting this standard. For purposes of this provision, "affordable rental unit" for low- and moderate-income households shall be determined by the grantee. The grantee shall maintain in its records the criteria used in making its determination.

(*5*) An eligible activity in support of new construction of a multifamily non-elderly housing project where at least 20 percent of the units will be available to low- and moderate-income persons.

(B) *Activities which aid in the prevention or elimination of slums or blight.* The following activities, in the absence of substantial evidence to the contrary, will be considered to aid in the prevention or elimination of slums or blight:

(*1*) Any activity which is carried out in and designed to upgrade an area:

(*i*) Meeting a definition of slums, blighted, deteriorated, or deteriorating area under State or local law; or

(*ii*) Where there are objectively determinable signs of physical deterioration throughout the area; *except that* residential rehabilitated will be considered to meet this standard only where each structure rehabilitated is considered substandard under local definition before rehabilitation. At a minimum this definition must include units which do not meet the Section 8 Existing Housing Quality Standards (24 CFR 882.109). Also, under this standard, all deficiencies making a structure substandard must be eliminated before assistance may be provided for less critical work on that structure. (Note: Despite this restriction, any rehabilitation activity which benefits low- and moderate-income households as described in paragraph (i)(A)(*4*) of this section, can be undertaken within an area meeting the criteria of this standard.) Formal designation of a slum or blighted area is not required under this standard, but evidence supporting the local determination that an area meets the criteria must be maintained by the recipient.

(*2*) Acquisition, demolition, residential rehabilitation, relocation, and historic preservation activities designed to eliminate specific conditions of blight or physical decay on a spot basis anywhere in the recipient's jurisdiction. Under this standard, residential rehabilitation for other than lower-income households is eligible only to the extent necessary to eliminate specific conditions detrimental to public health and safety.

(*3*) Activities necessary to complete Federally assisted urban renewal projects.

(C) *Activities designed to meet community development needs having a particular urgency.* In the absence of substantial evidence to the contrary, an activity will be considered to address this standard if the recipient certifies that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the recipient is unable to finance the activity on its own, and that other sources of funding are not available.

(ii) *Area benefit activities.* For purposes of determining compliance with the primary objectives, each separate activity that serves a specific area will be considered on the basis of that service area.

(iii) *Planning and administrative costs.* Program funds expended for planning and administrative costs under § 570.205 and § 570.206 will be considered to address the primary objectives.

(3) *Activities outside an applicant's boundaries.* An applicant may conduct eligible block grant activities outside its boundaries. These activities must be demonstrated to be appropriate to meeting the applicant's needs and objectives and must be consistent with State and local law. This provision includes using funds provided under this Subpart in a metropolitan city or an urban county.

§ 570.421 Applications from joint applicants.

(a) Units of general local government, including counties, may submit a joint application which addresses common problems faced by the jurisdictions, the

solution of which requires the mutual action of the joint applicants.

A joint application must be pursuant to a written cooperation agreement submitted with the application. The cooperation agreement must authorize one of the participating units of government to act as the applicant which will submit the application to HUD, and delineate the responsibilities of each participating unit of government with respect to the Small Cities Program. The applicant is responsible for ensuring compliance with all laws, regulations, and Executive Orders applicable to the Community Development Block Grant Program.

(b) *Data.* For joint applications, data from each participating unit is aggregated.

§ 570.422 [Reserved]

§ 570.423 Comprehensive Grant program, general requirements.

(a) *Definition.* A comprehensive program must meet all of the following criteria:

(1) Address a substantial portion of the identifiable community development needs within a defined area or areas;

(2) Involve two or more activities that bear a relationship to each other, excluding administration, planning, and management, and which either in terms of support or necessity are carried out in a coordinated manner; and

(3) Have beneficial impact within a reasonable period of time.

Exceptions to the requirement that the activities be located within a defined area or areas may be made if the applicant can demonstrate to HUD's satisfaction that the proposal represents a reasonable means of addressing the needs identified.

An application for a Comprehensive Grant which does not meet the definition of the Comprehensive Grant program may be considered for a Single Purpose Grant.

(b) *Multiyear funding commitments.* HUD shall not make new multiyear commitments to any applicant after December 31, 1981. Grants under multiyear commitments approved by HUD prior to December 31, 1981 will be funded, subject to funding availability, for those applicants that have met the requirements of subparagraph (c) of this section, and providing:

(1) The grantee submits the annual submission of a multiyear application described in § 570.426(e), and HUD determines that the annual program is consistent with that described in the original application or has been properly amended pursuant to § 570.434.

(2) HUD determines that the grantee's performance is adequate. Performance determinations are based on the criteria described in § 570.423(c)(2).

(3) HUD approves the application under the provisions of § 570.433.

(c) *Threshold requirements.* (1) *Program objectives.* (i) No grant shall be made to an applicant whose program does not directly impact on the applicant's need. Additionally, each activity must meet the requirements of § 570.420(k) in benefitting low and moderate income persons, or aiding in the prevention or elimination of slums or blight. Activities may also be included that the applicant certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health and welfare of the community, and where other financial resources are not available to meet such needs.

(ii) HUD will generally accept data from communities showing that the proposed activities meet the criteria of subparagraph (i) above. However, if available data, in the judgment of HUD, indicate that the proposed activities are inconsistent with the requirements of this subparagraph, HUD may request additional information or justification.

(2) *Capacity and performance.* No grant shall be made to an applicant that lacks the capacity to undertake the proposed program. Applicants which have participated in the Block Grant Program previously must have performed adequately. Performance and capacity determinations may be the basis for rejecting an application from further consideration. In determining whether an applicant has performed adequately, HUD examines the applicant's performance in the following areas:

(i) *Community development activities.* Compared with the applicant's schedule or schedules submitted in each previously funded application:

(A) The rate of progress achieved in moving activities into execution; and

(B) The rate of expenditure and obligation of community development funds.

(ii) *Housing activities.* (A) Notwithstanding the provisions of § 570.909(e), HUD shall determine the performance of an applicant to be adequate if it has met its Housing Assistance Plan (HAP) goals or, absent achievement of its HAP goals, if it has used available housing assistance resources to meet its HAP goals.

(B) HUD shall determine the applicant's performance to be inadequate if the applicant has taken an action which clearly prevents the provision of assisted housing for low and moderate income persons. A unit of general local government which has taken an action to prevent the provision of assisted housing is ineligible to apply for a grant under this Program until it has taken corrective action.

(iii) *Compliance with applicable laws and regulations.* (A) The applicant's compliance with the laws, regulations, and Executive Orders applicable to the Community Development Block Grant program;

(B) Resolution of findings made as a result of HUD monitoring; and

(C) Resolution of audit findings.

§ 570.424 Selection system for Comprehensive Grants.

Applications are rated and scored against each of the following factors. All points for each factor are rounded to the nearest whole number. The maximum score possible is 615.

	Points
(1) Need—absolute number of poverty persons	75
(2) Need—percent of poverty persons	75
(3) Program impact	400
(4) Outstanding performance:	
Fair Housing	40
Local equal opportunity efforts	25

Applications from counties and joint applications in which a county is participating are scored separately with respect to the needs factor at § 570.424(a).

(a) *Need—absolute number of poverty persons (75 points).* All applicants are compared in terms of the number of persons whose incomes are below the poverty level. Individual scores are obtained by dividing each applicant's absolute number of persons in poverty by the greatest number of persons in poverty of any applicant and multiplying by 75.

(b) *Need—percent of poverty persons (75 points).* All applicants are compared in terms of the percentage of their population below the poverty level. Individual scores are obtained by dividing each applicant's percentage of persons in poverty by the highest percentage of persons in poverty of any applicant and multiplying by 75.

(c) *Program impact (400 points).* Each applicant shall select four program design criteria from among the following ten. HUD shall measure the impact of the program on the identifiable needs in relation to the amount of funds requested for each of the program design criteria selected, considering:

—extent and seriousness of the identifiable needs;

—results to be achieved;

—number of persons to benefit, given the type of program;
—the nature of the benefit;
—additional actions that may be necessary to fully resolve the needs;
—previous coordinative actions taken by the applicant to address the needs;
—environmental considerations;
—whether displacement will be involved and what steps will be taken to minimize involuntary displacement and to mitigate its adverse effects or related hardships; and
—where appropriate, housing site selection standards.

(1) *Program design criteria.* (i) Supports comprehensive neighborhood conservation, stabilization, and/or revitalization.

(ii) Provides housing choice within the community either outside areas with concentrations of minorities and low and moderate income persons or in a neighborhood which is experiencing revitalization and substantial displacement as a result of private reinvestment, by enabling low and moderate income persons to remain in their neighborhood.

(iii) Supports the expansion of housing for low and moderate income persons by providing additional housing units not previously available.

(iv) Addresses a serious deficiency in a community's public facilities.

(v) Expands or retains employment opportunities.

(vi) Attracts or retains businesses which provide essential services.

(vfi) Removes slums or blighted conditions.

(viii) Resolves a serious threat to health or safety.

(ix) Supports other Federal or State programs being undertaken in the community or deals with the adverse impact of another recent Federal or State action. The other Federal or State program or action must be of substantial size or impact in the community in relation to the proposed program.

(x) Supports energy production or conservation.

(2) *Rating and ranking methods.* This factor requires a two-step rating process. First, the potential of the proposed program of activities to achieve the results intended by each selected criterion when considered in relation to other communities addressing the same criterion is assessed. A numerical value is assigned, based on the following:

The results would have insignificant impact	0
The results would have minimal impact	2
The results would have a moderate impact	4
The results would have a maximum impact	8

After each of the four criteria selected by an applicant is rated and a value assigned, the total is added (Program Impact Score maximum is 32). Then, the actual points are determined by dividing each applicant's Program Impact Score by the highest Program Impact Score achieved by any applicant and multiplying the result by four hundred.

(d) *Performance in fair housing and equal opportunity (50 points).* (1) *Fair Housing efforts (40 points).*

(i) *Twenty points* are awarded to applicant providing assisted housing for low and moderate income families located in a manner which provides housing choice either in areas outside of minority and low and moderate income concentrations; or in a neighborhood which is experiencing revitalization and substantial displacement as a result of private reinvestment, by enabling low and moderate income persons to remain in their neighborhood. However, if the community is predominantly inhabited by persons who are members of minority and/or low income groups, HUD shall assess the extent to which assisted housing is distributed throughout the community; and

(ii) *Twenty points* are awarded to applicants for implementation of a HUD-approved New Horizons Fair Housing Assistance Project (or demonstrated participation in a HUD-approved county/State/regional New Horizons Project); or implementation of a fair housing strategy that is equivalent in scope to a New Horizons Project.

(2) *Local Equal Employment and Entrepreneurial Efforts (25 points).* (i) *Fifteen points* are awarded to each applicant which demonstrates that at least five percent of all its contracts based on dollar value have been awarded within the past two years to minority owned and controlled businesses, providing the applicable percentage of minority population is five percent or less. If the applicable percentage of minority population exceeds five percent, then the applicant must have a corresponding percentage of its contracts awarded to minority businesses; however, twenty percent of the total dollar value of its contracts awarded to minority business enterprise will be sufficient for award of points for any applicant. The applicable percentage of minority population is the percentage of minorities in the applicant's jurisdiction, or in the county, whichever is higher.

(ii) *Ten points.* are awarded to each applicant which demonstrates that its percentage of minority permanent, full-time employment is greater than the percentage of minorities within the county, unless the percentage of minority population in the community itself exceeds that of the county, in which case minority employment must reflect the minority population of the community.

(e) *Funding process.* (1) *Final ranking.* The points received by each applicant on the rating factors are totalled and the applications ranked according to the point totals. Applicants are funded based on this final ranking to the extent funds are available.

(2) *Procedural error.* If an Area Office made a procedural error in the previous year's competition that, when corrected, would have resulted in awarding sufficient points to warrant funding of an otherwise eligible applicant, HUD may fund that applicant from current year funding.

§ 570.425 [Reserved]

§ 570.426 Application for Comprehensive Grants.

(a) The applicant shall prepare and publish a proposed application.

(b) The applicant shall submit to HUD a final application containing its community development objectives and activities. This final application shall be submitted in a form prescribed by HUD, to the appropriate area office.

(c) *Certification.* (1) The certifications shall be submitted in a form prescribed by HUD.

(2) In the absence of independent evidence (which may, but need not be derived from performance reviews or other sources) which tend to challenge in a substantial manner the certifications made by the applicant, such certifications will be accepted by HUD. If such independent evidence is available to HUD, however, HUD may require further information or assurances to be submitted in order to find the applicant's certifications satisfactory.

(d) If the applicant has received prior assistance under this Part, the area office will normally use information available within the area office to make the performance judgments required at § 570.423(c)(2). The area office may request additional information only in cases where it is essential to make the required performance judgments.

(e)(1) Applications for the second or third increments of a previous HUD multiyear commitment shall be submitted in a form prescribed by HUD, and shall include the certifications in subsection (c)(1).

(2) Area offices shall establish individual dates for submission of each final application from those grantees which have received multiyear

commitments in prior years. (Approved by the Office of Management and Budget under OMB control number 2506–0060.)

§ 570.427 Single Purpose Grant program general requirements.

(a) *General.* A Single Purpose Grant provides funds for one or more projects, each consisting of an activity or a set of activities and designed to meet a specific community development need. Funds are available to address serious problems with housing, public facilities which affect the public health and safety, or economic development.

(b) *Projects.* An applicant may seek funds for more than one project and for more than one problem area as long as the total grant request is within any established grant ceilings and individual grant amounts that are established. Each project is rated separately with respect to § 570.428(c). Grants requested, either by themselves or in combination with other stated funding sources, must be sufficient to complete the program.

(c) *Threshold requirements.* Each applicant must meet the requirements of § 570.423(c).

§ 570.428 Selection system for Single Purpose Grants.

Projects are rated and scored against each of the following factors. All points for each factor are rounded to the nearest whole number. The maximum score possible is 615.

	Points
(1) Need—absolute number of poverty persons	75
(2) Need—percent of poverty persons	75
(3) Program impact	400
(4) Outstanding Performance:	
Fair Housing	40
Local equal opportunity efforts	25

Applications from counties and joint applications in which a county is participating, are scored separately with respect to the needs factor at § 570.428(a).

(a) *Need—absolute number of poverty persons (75 points).* All applicants are compared in terms of the absolute number of poverty persons below the poverty level. Individual scores are obtained by dividing each applicant's absolute number of poverty persons by the greatest number of poverty persons of any applicant and multiplying the result by 75.

(b) *Need—percent of poverty persons (75 points).* All applicants are compared in terms of the percentage of their population below the poverty level. Individual scores are obtained by dividing each applicant's percentage of poverty persons by the highest percentage of poverty persons of any applicant and multiplying the results by 75.

(c) *Program impact (400 points).* Each project is compared to others addressing the same problem area. HUD shall measure the impact of the project on the identified need in relation to the amount of funds requested, considering:

—extent and seriousness of the identified need;
—results to be achieved;
—number of persons to benefit, given the type of program;
—the nature of the benefit;
—additional actions that may be necessary to fully resolve the need;
—previous coordinative actions taken by the applicant to address the need;
—environmental considerations;
—whether displacement will be involved and what steps will be taken to minimize involuntary displacement and to mitigate its adverse effects or related hardships; and
—where appropriate, housing site selection standards.

(1) *Problem areas.* Each project described in the application must address one of the following three categories:

(i) Housing.

(ii) Deficiencies in public facilities which affect the public health and safety.

(iii) Economic conditions.

Each applicant must use specific measurable terms to explain how its project impacts the problem area selected.

(2) *Rating method.* All projects addressing the same problem area are compared in terms of impact on the identified problem area, as follows:

The project would have insignificant impact	0
The project would have minimal impact	100
The project would have moderate impact	200
The project would have substantial impact	300
The project would have maximum impact	400

(d) *Performance in housing and equal opportunity (65 points).* (1) *Fair Housing efforts (40 points).*

(i) *Twenty points* are awarded to applicants providing assisted housing for low and moderate income families located in a manner which provides housing choice either in areas outside of minority and low and moderate income concentrations or in a neighborhood which is experiencing revitalization and substantial displacement as a result of private reinvestment, by enabling low and moderate income persons to remain in their neighborhood; however, if the community is predominantly inhabited by persons who are members of minority and/or lower income groups, HUD shall assess the extent to which assisted housing is distributed throughout the community; or

(ii) *Twenty points* are awarded to applicants for implementation of a HUD-approved New Horizons Fair Housing Assistance Project (or demonstrated participation in a HUD-approved county/State/regional New Horizons Project); or implementation of a fair housing strategy that is equivalent in scope to a New Horizons Project.

(2) *Local Equal Employment and Entrepreneurial Efforts (25 points).* (i) *Fifteen points* are awarded to each applicant which demonstrates that at least five percent of all its contracts based on dollar value have been awarded within the past two years to minority owned and controlled businesses, providing the applicable percentage of minority population is five percent or less. If the applicable percentage of minority population exceeds five percent, then the applicant must have a corresponding percentage of its contracts awarded to minority businesses; however, twenty percent of the total dollar value of its contracts awarded to minority business enterprise will be sufficient for award of points for any applicant. The applicable percentage of minority population is the percentage of minorities in the applicant's jurisdiction, or in the county, whichever is higher.

(ii) *Ten points* are awarded to each applicant which demonstrates that its percentage of minority permanent, full-time employment is greater than the percentage of minorities within the county unless the percentage of minority population in the community itself exceeds that of the county, in which case minority employment must reflect the minority population of the community.

(e) *Funding process.*—(1) *Final ranking.* The points received on each project on the rating factors are totalled and the project ranked according to the point totals. Applicants are funded based on this final ranking to the extent funds are available.

(2) *Procedural error.* If an Area Office made a procedural error in the previous year's competition that, when corrected, would have resulted in awarding sufficient points to warrant funding of an otherwise eligible applicant, HUD may fund that applicant from current year funding.

§ 570.429 [Reserved]

§ 570.430 Application for Single Purpose Grants.

(a) The applicant shall prepare and publish a proposed application.

(b) The applicant shall submit to HUD a final application containing its community development objectives and activities. This final application shall be submitted in a form prescribed by HUD, to the appropriate area office.

(c) *Certification.* (1) The certifications shall be submitted in a form prescribed by HUD.

(2) In the absence of independent evidence (which may, but need not be derived from performance reviews or other sources) which tend to challenge in a substantial manner the certifications made by the applicant, such certifications will be accepted by HUD. If such independent evidence is available to HUD, however, HUD may require further information or assurances to be submitted in order to find the applicant's certifications satisfactory.

(d) If the applicant has received prior assistance under this Part, the area office will normally use information available within the area office to make the performance judgments required at § 570.423(c)(2). The area office may request additional information only in cases where it is essential to make the required performance judgments. (Approved by the Office of Management and Budget under OMB control number 2506–0060.)

§ 570.431 Citizen participation requirements.

(a) *Proposed application.* In order to permit public examination and appraisal of the applicant's proposed application and to enhance public accountability, the applicant shall:

(1) Furnish citizens information concerning:

(i) Amounts of funds available for proposed community development and housing activities, and

(ii) The range of activities that may be undertaken;

(2) Hold one or more public hearings to obtain the views of citizens on community development and housing needs. Public hearings shall be scheduled in ways and at times that will provide for full participation by citizens in the community.

(3) (i) Develop and publish the proposed application of objectives and activities in such a manner as to afford affected citizens an opportunity to examine its contents, and to submit comments on the proposed application;

(ii) Afford citizens an opportunity to review and comment on the applicant's performance under any active community development block grant.

(b) *Final application.* The applicant shall:

(1) Consider any comments and views expressed by citizens on the proposed application, and may if it deems appropriate, modify the proposed application accordingly;

(2) Make the final application available to the public prior to its submission to HUD.

(c) *Amendments.* To assure citizen participation when considering subsequent amendments to a community development program which requires HUD approval, a grantee shall:

(1) Furnish citizens information concerning this amendment;

(2) Hold one or more public hearings to obtain views of citizens on the proposed amendment; or

(3) Develop and publish the proposed amendment in such a manner as to afford affected citizens an opportunity to examine the contents, and to submit comments on the proposed amendment;

(4) Consider any comments and views expressed by citizens on the proposed amendment, and, if deemed appropriate by the applicant, modify the final amendment accordingly;

(5) Make the final amendment to the community development program available to the public prior to its submission to HUD.

§ 570.432 Single purpose grants for imminent threat to public health or safety.

(a) *Criteria.* The following criteria apply for an imminent threat to public health or safety:

(1) Notwithstanding the provisions of § 570.428, the Area Manager may, at any time invite an application which requests funds available under this Subpart in response to a request for assistance to alleviate an imminent threat to public health or safety that requires immediate resolution. HUD shall verify the urgency and the immediacy of the threat with an appropriate authority other than the applicant prior to acceptance of the application, and the Area Manager shall review the claim to determine if , in fact, an imminent threat to public health or safety does exist. For example, an applicant with documented cases of disease resulting from a contaminated drinking water supply has an imminent threat to public health, while an applicant ordered to improve the quality of its drinking water supply over the next two years does not have an imminent threat within the definition of this paragraph. These funds are to be used to deal with those threats which represent an unique and unusual circumstance, not for the type of threat that occurs with frequency in a number of communities within a State.

(2) The applicant does not have sufficient local resources, and other Federal or State resources are unavailable to alleviate the imminent threat.

(b) *HUD action.* (1) Each Area Office Manager is authorized to reserve up to 15 percent of the funds allocated pursuant to Subpart A and assigned to the Area Office for Small Cities Grants to alleviate imminent threats to the public health or safety. Funds reserved are part of the percentage of funds available for Single Purpose Grants. Applications shall be submitted in accordance with § 570.430.

(2) Applications which meet the requirements of this section may be approved by the Area Office Manager without competition.

(3) The only funds reserved for imminent threats to the public health or safety are those set aside by the Area Manager. After these funds have been depleted, HUD shall not consider further requests for grants relating to imminent threats during that fiscal year.

(c) *Letter to proceed.* Section 570.433(a)(3) notwithstanding, after a determination has been made that an imminent threat exists, HUD may issue the applicant a letter to proceed to incur costs to alleviate the imminent threat. Reimbursement of such costs is dependent upon HUD approval of the final application.

(d) *Environmental review.* Pursuant to 24 CFR 58.34(a)(8), Single Purpose Grants for imminent threat to public health or safety are excluded from some or all of the environmental review requirements of Part 58, to the extent provided therein.

§ 570.433. HUD review and actions on final applications for single purpose and comprehensive applicants.

(a) *Final application submission.*—(1) *Submission deadline.* HUD shall establish a time period during which final applications must be submitted to the appropriate area office. The dates for this period are published in a notice in the **Federal Register.** Final applications may be mailed, and if they are received after the deadline, must be postmarked no later than the published submission deadline date. Any application not received or postmarked by this date is unacceptable, and will be returned.

(2) *Incomplete applications.* Applications must contain the information required by HUD. Information relative to the application will not be accepted or considered if received after the submission deadline

unless specifically requested in writing by HUD.

(3) *Costs incurred by the applicant.* (i) HUD will not reimburse or recognize any costs incurred before submission of the final application, except under a multiyear commitment and then, subject to prior HUD approval, only where failure to recognize such costs would create undue hardships on the grantee.

(ii) Also, HUD will not normally reimburse or recognize costs incurred before HUD approval of the final application. However, under unusual circumstances the Area Manager may consider and approve written requests to recognize and reimburse costs incurred after submission of the application where failure to do so would impose undue or unreasonable hardship on the applicant. Such authorization will be made only where the conditions for release of funds under the provisions for environmental review have been met pursuant to 24 CFR Part 58; and with the understanding that HUD has no obligation whatsoever to approve the application.

(b) *HUD action on the final application.* (1) *Review and notification.* Following the review, rating and ranking of the applications, HUD will promptly notify each applicant of the action taken with regard to its application. Documentation which supports HUD decisions about applications is available to the public.

(2) *Fundable applications.* Each applicant whose application has ranked sufficiently high to warrant funding as described at § 570.424(e), or § 570.428(e), as well as multiyear submissions pursuant to §570.423(b), will be notified that its application has been approved and will be offered a grant agreement provided that it has met the threshold requirements described at § 570.423(c)(2).

(3) *Criteria for conditional approval.* HUD may make a conditional approval in which the case the grant will be approved but the obligation and utilization of funds is restricted. The reasons for the conditional approval and the actions necessary to remove the condition shall be specified. Failure to satisfy the condition may result in a termination of the grant. Conditional approval may be made:

(i) Where local environmental reviews under § 570.603 have not yet been completed;

(ii) The requirements of § 570.607 regarding the provision of flood or drainage facilities have not yet been satisfied;

(iii) To ensure that actual provision of other resources required to complete the proposed activities will be available within a reasonable period of time;

(iv) To ensure the project can be completed within estimated costs; or

(v) Pending site and neighborhood standards approval for proposed housing projects, if applicable.

(4) *Non-fundable applications.* Those applicants whose applications did not rank sufficiently high to warrant funding as described at § 570.424(e) or § 570.428(e), or who have not met the threshold requirements described at § 570.423(b) and (c), will be notified that their applications cannot be funded.

§ 570.434 Program amendments for Single Purpose and Comprehensive Grants.

(a) Grantees shall request prior HUD approval for all program amendments involving new activities or alteration of existing activities that will significantly change the scope, location, or objectives of the approved activities or beneficiaries. Approval is subject to the following:

(1) Programs or projects which include new or significantly altered activities are rated in accordance with the criteria for selection applicable at the time the original preapplication or application, whichever is applicable, was rated. The rating of the program or projects proposed which include the new or altered activities proposed by the amendment must be equal to or greater than the lowest rating received by a funded project or program during that cycle of ratings.

(2) Consideration shall be given to whether any new activity proposed can be completed promptly.

(b) Any program amendments that do not require HUD approval must be fully documented in the grantee's records.

(c) *Citizen participation requirements.* Whenever an amendment requires HUD approval, the requirements for citizen participation at § 570.431(c) must be met.

§ 570.435 [Reserved]

§ 570.436 [Reserved]

§ 570.437 Applicability of 24 CFR Part 891.

For purposes of 24 CFR Part 891, previously approved Housing Assistance Plans remain in effect.

§ 570.438 Reallocated funds.

(a) *General.* This section governs reallocated funds originally allocated for use under 24 CFR Part 570, Subpart F (Small Cities Program) and Subpart I (States Program) where HUD is administering the program at the time at which funds become available.

(b) *Assignment of funds to be reallocated.* (1) reallocated funds shall be added to the next Small Cities Program competition; or

(2) fund any application not selected for funding in the most recent Small Cities competition due to a procedural error made by HUD; or

(3) fund the most highly ranked unfunded application or applications from the most recent Small Cities Program competition.

(c) *Timing.* Funds which become available shall be used as soon as practicable. Where funds become available pursuant to §§ 470.498 and 470.499 (actions against a State administering the program), the funds shall be used in the succeeding fiscal year.

(Title I, Housing and Community Development Act of 1974 as amended (42 U.S.C. 5301 et seq.); and Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

Dated: June 22, 1982.

Stephen J. Bollinger,

Assistant Secretary for Community Planning & Development.

[FR Doc. 82-21870 Filed 8-13-82; 8:45 am]

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Monday
August 16, 1982

Part VI

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Formula Grants for Juvenile Justice; Final Rule

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

28 CFR Part 31

Formula Grants for Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of final rule and effective date.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJDP) is giving notice that its final rule published at 47 FR 21226, May 17, 1982, and the stayed portion of § 31.303(i)(3)(iv)(B) published in the **Federal Register** of June 30, 1982, 47 FR 28546, has been modified and will be effective August 16, 1982. OJJDP had requested further public comments on the stayed clause of the regulation which resulted in its modification. The regulation implements the Valid Court Order amendment to section 223(a)(12)(A) of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, establishing a basic framework within which non-criminal juvenile offenders who violate valid court orders may be placed in secure facilities.

EFFECTIVE DATE: August 16, 1982.

FOR FURTHER INFORMATION CONTACT: Frank M. Porpotage, II, Formula Grants and Technical Assistance Division, OJJDP, 633 Indiana Avenue NW., Washington, DC 20531, Telephone: (202) 724–5911.

SUPPLEMENTARY INFORMATION: On June 30, 1982, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) published in the **Federal Register** a "Confirmation of Effective Date in Part and Stay of Effective Date in Part." OJJDP requested comments on one portion of its regulation to implement the Valid Court Order amendment to section 223(a)(12)(A) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

The regulation is § 31.303(i)(3) of 28 CFR, Part 31 (Appendix A), which implements the formula grant program established by the Act. The portion for which additional comments were sought is § 31.303(i)(3)(iv)(B), which establishes the conditions under which a juvenile *accused* of violating a valid court order may be held in secure detention after a judicial determination has been made, based on a hearing, that there is probable cause to believe the youth violated the court order. Prior to this modification, the first clause of § 31.303(i)(3)(iv)(B) provided the following two circumstances under which detention pending a violation hearing would be sanctioned.

(B) the juvenile has a demonstrable recent record of willful failure to appear at family court preceedings *or* a demonstrable recent record of violent conduct resulting in physical injury to self or others.

The OJJDP received 75 written comments from private citizens, private not-for-profit organizations, State and local public agencies and national organizations and associations. All comments have been considered by the OJJDP in adopting the final rule for the Valid Court Order provision.

Discussion of Comments

The central issue related to the subject clause was whether the limitation on judicial authority to place a status offender charged with a violation of a valid court order in secure detention was consistent with the amended Statute, section 223(a)(12)(A) of the Act, and its legislative history.

The majority of commentators recommended retention of the two conditions stressing that abandoning them would weaken the deinstitutionalization thrust of the Act. In addition, it was argued that the legislative history of the amendment indicated that Congress wanted the exception applied sparingly for those chronic status offenders who "continually flout the will of the court."

Comments from judicial associations recommended that the conditions to permit detention of an alleged violator beyond the 24-hour grace period should be reflective of the plain language of the amendment or be increased to cover other circumstances reflected by State law. First, courts must be provided with the ability to authorize detention of the juvenile if: (1) There is reason to believe that the juvenile may abscond and not appear at hearings, and (2) for protective purposes such as when the juvenile seeks the protective intervention of the court or may be a danger to himself or others or when no parent, guardian, or custodian can be found for the juvenile. In the first case, it is pointed out that chronic and habitual runaways may appear at court hearings, but not abide by court ordered non-secure placement or other orders of the court. By retaining this authority the court will be able to enforce their orders and provide needed services to the chronic status offender who has failed to accept non-secure treatment. Protective intervention of the court would be used in limited instances to provide protection to a juvenile who may need some form of protection from outside community factions. In the second instance, "protective" purposes were anticipated by the drafters of the amendment to enable courts to fulfill their basic statutory purpose.

OJJDP has determined that the proposed limits to detention circumstances lacked a substantive legal basis. It was concluded that the commentary of the judicial organizations is in keeping with the plain reading of the statute which provides an exception for all juveniles "charged with" violation of a valid court order and would address needed judicial discretion for enforcing valid court orders. It is believed that the reference to "protective purposes" and assurance of "appearance" in Subsection (iv) is consistent with the purposes of the statute and consistent with administration policy to implement legislation in as simple manner as possible with a concern to its effects on existing State law. Subsection (iv) basically covers situations where a judge has reason to believe, based on a record of failure to appear at a family court proceeding, that the juvenile will not appear at a hearing; or, has reason to believe, based on a record of conduct resulting in physical injury to self or others, that the juvenile may be a danger to self or others; or, that the juvenile is a habitual or chronic runaway who will not appear at the violation hearing or remain in non-secure placement; or, where the juvenile requests the protective custody of the court; or, where no parent, guardian, or custodian can be found who is willing to provide proper supervision.

While few commentators specifically suggested that any of these circumstances are inappropriate, an underlying theme was expressed which emphasized limited use of the authority granted in the amendment. We are aware of no other circumstances, permitted by State law, which are relevant to the amendment or under which this authority would be properly exercised. However, laws and procedures change and individual cases do not always fit into neat regulatory classifications. Consequently, the general "protective purpose" which is the purpose intended by the amendment is set out in Subsection (iv).

Section 31.303(i)(3)(vi) of the final portion of regulation addressed procedural requirements when judges enter any order that directs or authorizes placement in a secure facility. A clarification was requested to reflect that a separate action or statement that a "determination" had been made on the record was not intended.

All juvenile courts are "courts of record." The clause "on the record" has been eliminated since the determination will automatically be recorded in a court of record and the record will reflect the provision of due-process rights and elements of the order. Secondly, the clause "in the case of a violation hearing" is added to the last clause of the Section. This will require judicial determination of the least restrictive alternative at the time of violation hearings only which is the intent of section 223(a)(12)(B) of the Act from which this clause was drawn.

This announcement does not constitute a "major" rule as defined by Executive Order 12291 because it does not result in: (a) An effect on the economy of $100 million or more, (b) a major increase in any costs or prices, or (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

Finally, because this regulation will not have significant economic impact on a substantial number of small entities, no analyses of the impact of these rules on such entities is required by the Regulatory Flexibility Act, U.S.C. 601, et seq., 28 CFR Part 31 is accordingly amended by adding a new § 31.303(i)(3) as shown in Appendix A.

Charles A. Lauer,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

List of Subjects in 28 CFR Part 31

Grant programs, Law, Juvenile delinquency.

PART 31—FORMULA GRANTS

Section 31.303(i)(3) (iv) and (vi) are revised to read as set forth below. For the convenience of the user, we are reprinting the final rule as published at 47 FR 21226, May 17, 1982 and republished at 47 FR 28546, June 30, 1982, with the modifications discussed herein included.

§ 31.303 Substantive requirements.

* * * * *

(i) * * *

(3) *Valid Court Order.* For the purpose of determining whether a valid court order exists and a juvenile has been found to be in violation of that valid order all of the following conditions must be present prior to secure incarceration:

(i) The juvenile must have been brought into a court of competent jurisdiction and made subject to an order issued pursuant to proper authority. The order must be one which regulates future conduct of the juvenile.

(ii) The court must have entered a judgment and/or remedy in accord with established legal principles based on the facts after a hearing which observes proper procedures.

(iii) The juvenile in question must have received adequate and fair warning of the consequences of violation of the order at the time it was issued and such warning must be provided to the juvenile and to his attorney and/or to his legal guardian in writing and be reflected in the court record and proceedings.

(iv) All judicial proceedings related to an alleged violation of a valid court order must be held before a court of competent jurisdiction. A juvenile accused of violating a valid court order may be held in secure detention beyond the 24-hour grace period permitted for a noncriminal juvenile offender under OJJDP monitoring policy, for protective purposes as prescribed by State law, or to assure the juvenile's appearance at the violation hearing, as provided by State law, if there has been a judicial determination based on a hearing during the 24-hour grace period that there is probable cause to believe the juvenile violated the court order. In such case the juvenile may be held pending a violation hearing for such period of time as is provided by State law, but in no event should detention prior to a violation hearing exceed 72 hours exclusive of nonjudicial days. A juvenile found in a violation hearing to have violated a court order may be held in a secure detention or correctional facility.

(v) Prior to and during the violation hearing the following full due process rights must be provided:

(A) The right to have the charges against the juvenile in writing served upon him a reasonable time before the hearing;

(B) The right to a hearing before a court;

(C) The right to an explanation of the nature and consequences of the proceeding;

(D) The right to legal counsel, and the right to have such counsel appointed by the court if indigent;

(E) The right to confront witnesses;

(F) The right to present witnesses;

(G) The right to have a transcript or record of the proceedings; and

(H) The right of appeal to an appropriate court.

(vi) In entering any order that directs or authorizes disposition of placement in a secure facility, the judge presiding over an initial probable cause hearing or violation hearing must determine that all the elements of a valid court order (paragraphs (i)(3), (i), (ii), (iii) of this section) and the applicable due process rights (paragraph (i)(3), (v) of this section) were afforded the juvenile and, in the case of a violation hearing, the judge must determine that there is no less restrictive alternative appropriate to the needs of the juvenile and the community.

(vii) A non-offender such as a dependent or neglected child cannot be placed in secure detention or correctional facilities for violating a valid court order.

John J. Wilson,

Acting General Counsel.

[FR Doc. 82-22268 Filed 8-13-82; 8:45 am]

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Part VII

Department of Transportation

Federal Aviation Administration

Fees for Certification of Foreign Airmen and Air Agencies

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, 65, 67, 145, and 187

[Docket No. 22052; Amdt. Nos. 61-72, 63-22, 65-28, 67-12, 145-20, and 187-4]

Fees for Certification of Foreign Airmen and Air Agencies

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: These amendments establish (1) a schedule of fees for issuing certain airmen and repair station certificates to certain foreign nationals outside the United States; (2) a method for collecting those fees; and (3) a need requirement for original certification of those airman (a need requirement has already been established for issuing certificates to foreign repair stations). These amendments are designed primarily to recover costs the FAA incurs in certificating foreign airmen and repair stations overseas. The amendment requires that certificates be issued overseas to foreign nationals only when needed to operate or assure the continued airworthiness of U.S.-registered civil aircraft. Finally, this amendment is in keeping with the intent of Congress.

EFFECTIVE DATE: October 18, 1982.

FOR FURTHER INFORMATION CONTACT:
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or
Arthur C. Jones, Chief, Certification Branch, AFO-840, General Aviation and Commerical Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, Telephone (202) 426-8196.

SUPPLEMENTARY INFORMATION:

I. Background

On July 17, 1981, the FAA issued Notice of Proposed Rulemaking No. 81-12 (46 FR 40529; August 10, 1982) proposing: (1) To establish fees for issuance of certain airman and repair station certificates to foreign nationals residing outside the United States; (2) a method of collecting those fees; (3) a need requirement for those airmen; and (4) a 2-year limitation on the validity of certificates issued to foreign nationals. All interested persons have been given an opportunity to participate in the making of the proposed regulations, and due consideration has been given to all matters presented.

A. Statutory

Title VI of the Federal Aviation Act of 1958, as amended (the Act), gives the Administrator authority to issue certificates for airmen, instructors, schools, and repair stations. Section 602(b) states that the Administrator may, at his discretion, prohibit or restrict the issuance of airman certificates to aliens.

In addition, the Administrator is charged with establishing a fair and equitable system for recovering full costs expended for any service, such as issuing the certificates discussed in Notice 81-12, which provides a special benefit to an individual beyond those which accrue to the general public. Title V of the Independent Offices Appropriation Act of 1952 (31 U.S.C. 483a) states:

> It is the sense of the Congress that any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared or issued by any Federal Agency * * * to or for any person (including groups, associations, organizations, partnerships, corporations or businesses), except those engaged in the transaction of official business of the Government, shall be self-sustaining to the full extent possible * * *.

To give full effect to this sense of Congress, section 483a further provides:

> The head of each Federal agency is authorized by regulation (which, in the case of agencies in the executive branch, shall be as uniform as practicable and subject to such policies as the President may prescribe) to prescribe therefor such fee, charge, or price, if any, as he shall determine, in case none exists, or redetermine, in case of any existing one, to be fair and equitable taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts * * *.

The statute provides that the amounts collected shall be paid into the Treasury as miscellaneous receipts.

B. OMB Guidance

To aid in establishing fee schedules, the Office of Management and Budget (OMB) has prescribed in Circular No. A-25, "User Charges," the general guidelines to be used in developing an equitable and reasonable uniform system of charges for certain Government services and property.

The circular provides that "Where a service (or privilege) provides special benefits to an identifiable recipent above and beyond those which accrue to the public at large, a charge should be imposed to recover the full cost to the Federal Government of rendering that service." Circular No. A-25 specifies:

> A special benefit will be considered to accrue and a charge should be imposed when a Government-rendered service:
> (a) Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public (e.g., receiving a patent, crop insurance, or license to carry on a specific business); or
> (b) Provides business stability or assures public confidence in the business activity of the beneficiary (i.e., certificates of necessity and convenience [sic: convenience and necessity] for airline routes, or safety inspections of craft); or
> (c) Is performed at the request of the recipient and is above and beyond the services regularly received by other members of the same industry or group, or of the general public (e.g., receiving passport, visa, airman's certificate, or an inspection after regular duty hours).

C. Previous Notices

Consistent with the guidelines in Circular No. A-25, in recent years the FAA issued several notices of proposed rulemaking to establish a schedule of fees for various FAA activities (Notices 67-17, 67-18, and 78-6). The schedules were predicated, however, on the FAA's systemwide total cost of performing specific certification activities, and no attempt was made to distinguish the far greater costs incurred performing certification services overseas from costs incurred performing similar services in the United States. The proposed fee schedules were never implemented. Beginning in 1973, the Congress annually prohibited implementing fee schedules through language in the appropriations legislation for the Department of Transportation. In 1979, this prohibition was deleted from the appropriations legislation but included in Section 45 of the Airline Deregulation Act of 1978:

> Notwithstanding any other provision of law, neither the Secretary of Transportation nor the Administrator of the Federal Aviation Administration shall collect any fee, charge, or price for any approval, test, authorization, certificate, permit, registration, conveyance, or rating relating to any aspect of aviation (1) which is in excess of the fee, charge, or price

for such approval, test, authorization, certificate, permit, registration, conveyance, or rating which was in effect on January 1, 1973, or (2) which did not exist on January 1, 1973, until all such fees, charges, and prices are reviewed and approved by Congress.

Before 1970, a liberal policy prevailed within the FAA regarding acceptance of applications for airman and air agency certificates by foreign nationals residing outside the United States. During the 1970's, however, the continuous expansion in worldwide demand for FAA certification services, along with the adverse movement of currency exchange rates against the U.S. dollar, placed an undue burden on FAA budgetary and manpower resources.

Simultaneously, the appropriateness of this policy was called into question. The technical sophistication of many foreign civil aviation certification authorities has been stengthened by general economic growth and civil aviation technical assistance provided by the International Civil Aviation Organization (ICAO), the United States, and other nations. Overly free exportation of U.S. certificates could deter the development of competent, indigenous certification programs. The FAA wishes to avoid that result and to encourage foreign governments in developing aeronautical codes and administrative capabilities which would permit them to conduct their own certification functions.

For these reasons the Administrator began a practice of restricting recertification of foreign nationals, primarily through the requirement that the applicant show that such certification is required to operate or assure the continued airworthiness of U.S.-registered civil aircraft (need requirement). This need requirement was incorporated in regulations governing certification of foreign repair stations (14 CFR 145.71). To further ensure consistent implementation of this practice, these amendments incorporate the need requirement in the Federal Aviation Regulations (14 CFR Parts 61, 63, 65 and 67) governing initial airman certification.

In 1980 Congress passed the International Air Transportation Competition Act of 1979, giving the Administrator authority to establish fee schedules for airman and repair station certificates issued outside the United States. Section 28 of that Act amends section 45 of the Airline Deregulation Act of 1978 to read as follows:

> Nothing in this section shall prohibit the Secretary of Transportation or the Administrator from collecting a fee, charge, or price for any test, authorization, certificate, permit, or rating, administered or issued outside the United States, relating to any airman or repair station.

Although section 28 provides discretionary authority to collect fees from any applicant residing outside the United States, this regulatory amendment establishes fees to be collected only from foreign nationals residing outside the United States.

II. Discussion of Amendments

In keeping with the authority granted under section 28 of the International Air Transportation Competition Act of 1979, these amendments establish a schedule of fair and equitable fees for airman and repair station certification activities performed for foreign nationals outside the United States. For purposes of these amendments, persons having resident alien status are treated the same as U.S. citizens and will not be charged for FAA certification should it occur outside the United States.

Fixed fees for airman certificates and hourly rates for assessing fees for repair station certificates are included in the regulations as a new appendix to Part 187 entitled "Fee Schedule for Certification Services Performed Outside the United States on Behalf of Foreign Nationals Other Than Resident Aliens." (Fixed fees could not be derived for repair station certificates because the time involved varies widely.) All fees are derived from total certification costs and include direct and indirect labor costs, overhead costs, interest recovery, depreciation, and space rent costs, where appropriate. The fees therefore implement OMB Circular No. A–25 and will recover all airman and repair station certification costs incurred by the FAA in issuing original certificates to foreign nationals.

No fees will be charged for renewing airman certificates. A fee will continue to be charged for replacing stolen or lost certificates. In addition, fees will be assessed for reissuing repair station certificates since reissuing these certificates requires considerable expenditure of FAA technical resources. However, because the technical resources expended in reissuing Inspection Authorization Certificates under § 65.91 have, upon further review, been determined to be minimal, the proposed fee for renewing these certificates is not adopted. In addition, a requirement has been added that checks tendered for fee payment must be drawn on a U.S. bank. This requirement has been added because Treasury depositaries have established minimum check amounts acceptable for deposit. Without this requirement a substantial number of checks submitted for fees would be uncollectible.

These amendments also formally establish a need requirement for issuing certificates to foreign applicants outside the United States; that is, the certificates must be needed for the operation or continued airworthiness of U.S.-registered aircraft. Foreign nationals who are resident aliens will not have to meet this requirement.

The FAA does not currently issue to foreign nationals overseas: (1) Any certificates for Pilot Schools (Part 141), Ground Instructors (Part 143), Aviation Maintenance Technical Schools (Part 147), or Parachute Lofts (Part 149), and (2) certificates issued under subparts of Part 65 for Aircraft Dispatchers (Subpart C), Repairmen (Subpart E), or Parachute Riggers (Subpart F). Consequently, those parts and subparts have not been amended to include the need requirement and other requirements included in these amendments. Subpart B of Part 65 similarly has not been amended although it is understood the current practice of issuing under this subpart a limited number of air traffic control tower operator certificates overseas to foreign nationals to operate civilian/military joint-use facilities in Europe will be continued under an appropriate agreement with the Department of Defense.

Notice 81–12 proposed a 2-year validity period for each certificate issued to a foreign national who is not a resident alien. In this regard, the FAA has determined that additional information concerning this issue is needed. Therefore the proposal concerning the 2-year validity period is not adopted at this time. The FAA may, however, initiate rulemaking in this area in the future. It should be noted that withdrawing this proposal does not alter the current renewal requirements for repair station, flight instructor, inspection authorization, certain flight engineer, and student pilot certificates.

III. Fee Collection

For airman certificates, the FAA will collect the fees at the time of application for a certificate or rating, after first ascertaining the applicant's eligibility. The Flight Standards Office (FSO) or designated examiner will determine whether the applicant meets the need requirement and other preliminary eligibility requirements, such as age and currency. If these requirements are met, the FSO will issue a receipt as evidence of payment and forward the applicable fee to the regional accounting office serving the area. Fees must be in the form of a check, money order, or draft payable in U.S. currency to the Federal Aviation Administration and drawn on

a U.S. bank. No application will be acted upon until evidence of the payment has been presented. There will be no refund of any fee payment for any examination which the applicant fails to pass. However, if an applicant notifies the FAA at least one week before a scheduled examination that he wishes it cancelled, the FAA will refund the fee payment after deducting a minimal service charge to cover the cost of processing the application.

In the case of repair station certificates, applicants will submit as prepayment the costs required for 25 hours of technical activity and 7.5 hours of clerical activity for original certification or approval of a change of location or housing of facilities, or 10 hours of technical activity and 3 hours of clerical activity for an amendment or renewal of the certificate due to an added rating or change in ownership, at the hourly rates specified in the appendix to Part 187. This prepayment will be processed in the same fashion as fees collected for airman certificates. If the time required in actual certification is less than 25 and 7.5 hours or 10 and 3 hours, the FAA will submit to the applicant a refund to cover the difference between prepayment and actual costs. Conversely, if the time required is greater, the applicant will be required to submit the additional funds. As in the case of airman certificates, applicants for repair station certificates must pay these fees, regardless of whether a certificate is awarded.

In Notice 81–12, the agency proposed to amend § 65.15a. That section had previously been revoked by another regulatory action and, therefore, the proposed amendment was inappropriate. Therefore, the proposal to amend § 65.15a is withdrawn.

IV. Analysis of Comments

The FAA received 39 comments in response to Notice 81–12, 29 of which originated from the same pilot school in Belgium. Most of these comments, particularly those originating from the Belgium pilot school, argue that the proposed 2-year renewal requirement would inhibit the safe expansion of aviation in many parts of the world by denying FAA airman certificates to many foreign nationals overseas who may not be able to demonstrate periodically that they are operating or assuring the continued airworthiness of U.S.-registered aircraft. These commenters further argue that, as a result, aviation safety would suffer, the world market for aviation products and services would decrease, and most important, the current orientation of many pilots toward U.S. products and services would be substantially reduced.

Regarding this latter effect, the commenters argue the proposed 2-year renewal requirement would decrease U.S. general aviation exports by reducing the number of pilots trained on U.S. equipment. As one commenter states, "Foreign pilots trained on U.S.-aircraft will develop U.S.-brand loyalty, which would reflect when purchasing aircraft in their native countries" (sic). Those foreign nationals holding FAA flight instructor certificates apparently feel that the inability of some foreign nationals to meet the continuing need requirement would cause them to seek training from foreign-certificated flight instructors who use foreign-manufactured equipment and related training aides instead of FAA-certificated instructors using U.S.-manufactured equipment and related training aides.

Other commenters disagree with the proposed renewal requirement as a safety surveillance measure as it applies to airman certificates issued under Parts 61 and 63. One commenter points out that the FAA's current biennial flight review and instrument competency checks fulfill the requirement for safety surveillance and that a proposed 24-month term for a new license would appear to be a duplication of the biennial flight review.

The FAA believes that although these comments have merit as they apply to certification under Part 61, similar surveillance does not exist for airmen certificated under Parts 63 and 65. This amendment would have ensured greater surveillance of operations involving U.S.-registered aircraft operating outside the United States. However, unless and until it is determined that foreign nationals should be required to demonstrate a need for certification on a periodic basis, the FAA does not believe it appropriate to institute the biennial renewal requirement. Therefore, the proposal is withdrawn at this time.

Other commenters point out that at many overseas locations served by U.S. air carriers there is no FAA-certificated repair station and that it is financially advantageous for U.S. air carriers to use resident foreign nationals who are FAA-certificated mechanics rather than incur the considerably higher costs of stationing FAA-certificated U.S. citizens at these locations. Finally, they indicate that many foreign nationals may find it difficult to pay the $400 fee for original airframe mechanic certification and be deterred from applying.

Current FAA-certificated mechanics will not be required to pay the fee for a mechanic certificate or the fee for an inspection authorization certificate. While the costs of initial certification of new applicants may have to be borne directly or indirectly by the U.S. employer, the potential cost impact on U.S. air carriers is minimal when compared to either their total overseas maintenance costs or the costs of stationing FAA-certificated U.S. citizens overseas. Furthermore, the need for cost recovery and fiscal responsibility in government far outweighs this impact.

The FAA has also considered the possibility that U.S. citizens, such as those providing humanitarian or religious services in remote overseas locations, could be impacted negatively if these proposed fees deter foreign nationals from applying for original FAA mechanic certificates. The FAA does not expect foreign nationals to be deterred from applying. The employment value of certification to the foreign mechanic far outweighs the cost of this fee, and the value of the services provided U.S. citizens far outweighs whatever small percentage of the certification cost is passed on to them. Moreover, many of these U.S. citizens are already required to register their aircraft with the Civil Aviation Authority in the country in which it is based and therefore would be unaffected by the rule.

V. Issuance of Medical Certificates

Notice 81–12 proposed an $8 fee for the initial issuance of FAA medical certificates. Internal FAA review has shown that administering this separate fee for medical certificates would create an excessive burden by requiring the FAA to monitor the fee collection activities of overseas designated aviation medical examiners (AME's). To avoid this problem, applicants for initial student pilot certificates issued by the FAA or by a Designated FAA Examiner will pay a single fee for airman certification which will include $8 to cover the costs of a medical certificate issued under Part 67. An $8 charge will also be included into the fee for an initial certificate issued under §§ 61.75, 61.77, 63.23, and 63.42 if the applicant presents such a medical certificate as evidence of meeting the medical standards for the foreign certificate upon which the application is based.

In keeping with the decision to remove any fee collection responsibility from AME's, overseas applications for student pilot certificates must now be made directly to an FAA Flight Standards Office or to a Designated FAA Examiner and cannot be made to an AME. The administrative procedures

of § 61.85 governing applications for student pilot certificates therefore have been amended to cover only applications made within the United States.

VI. List of Subjects

14 CFR Part 61

Airmen, Pilots, Students, Foreign persons, Aviation safety, Aircraft.

14 CFR Part 63

Airmen, Aviation safety, Aircraft.

14 CFR Part 65

Airmen, Aviation safety, Aircraft.

14 CFR Part 67

Airmen, Aviation safety, Medical records.

14 CFR Part 145

Air carriers, Aircraft, Aviation safety.

14 CFR Part 187

Airmen, Transportation.

VII. The Amendment

Accordingly, Parts 61, 63, 65, 67, 145, and 187 of the Federal Aviation Regulations (14 CFR Parts 61, 63, 65, 67, 145, and 187) are amended, effective October 18, 1982, as follows:

PART 61—CERTIFICATION: PILOTS AND FLIGHT INSTRUCTORS

1. By adding a new § 61.2 to read as follows:

§ 61.2 Certification of foreign pilots and flight instructors.

A person who is neither a United States citizen nor a resident alien is issued a certificate under this part (other than under § 61.75 or § 61.77), outside the United States, only when the Administrator finds that the pilot certificate is needed for the operation of a U.S.-registered civil aircraft or finds that the flight instructor certificate is needed for the training of students who are citizens of the United States.

2. By revising § 61.13(a) to read as follows:

§ 61.13 Application and qualification.

(a) An application for a certificate and rating or for an additional rating under this part is made on a form and in a manner prescribed by the Administrator. Each person who is neither a United States citizen nor a resident alien must show evidence that the fee prescribed by Appendix A of Part 187 of this chapter has been paid if that person—

(1) Applies for a student pilot certificate to be issued outside the United States; or

(2) Applies for a written or practical test to be administered outside the United States for any certificate or rating issued under this part.

* * * * *

3. By revising § 61.85(a) to read as follows:

§ 61.85 Application.

* * * * *

(a) A designated aviation medical examiner when applying for an FAA medical certificate in the United States; or

* * * * *

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

4. By adding a new § 63.2 to read as follows:

§ 63.2 Certification of foreign flight crewmembers other than pilots.

A person who is neither a United States citizen nor a resident alien is issued a certificate under this part (other than under § 63.23 or § 63.42) outside the United States only when the Administrator finds that the certificate is needed for the operation of a U.S.-registered civil aircraft.

5. By revising § 63.11(a) to read as follows:

§ 63.11 Application and issue.

(a) An application for a certificate and appropriate class rating, or for an additional rating, under this part must be made on a form and in a manner prescribed by the Administrator. Each person who is neither a United States citizen nor a resident alien and applies for a written or practical test to be administered outside the United States for any certificate or rating issued under this part must show evidence that the fee prescribed in Appendix A of Part 187 of this chapter has been paid.

* * * * *

6. By revising § 63.15(a) to read as follows:

§ 63.15 Duration of certificates.

(a) Except as provided in § 63.23 and paragraph (b) of this section, a certificate or rating issued under this part is effective until it is surrendered, suspended, or revoked.

* * * * *

§ 63.15a [Reserved]

7. By revoking and reserving § 63.15a as follows:

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

8. By adding a new § 65.3 to read as follows:

§ 65.3 Certification of foreign airmen other than flight crewmembers.

A person who is neither a U.S. citizen nor a resident alien is issued a certificate under Subpart D of this part, outside the United States, only when the Administrator finds that the certificate is needed for the operation or continued airworthiness of a U.S.-registered civil aircraft.

9. By revising § 65.11(a) to read as follows:

§ 65.11 Application and issue.

(a) Application for a certificate and appropriate class rating, or for an additional rating, under this part must be made on a form and in a manner prescribed by the Administrator. Each person who is neither a U.S. citizen nor a resident alien and who applies for a written or practical test to be administered outside the United States or for any certificate or rating issued under this part must show evidence that the fee prescribed in Appendix A of Part 187 of this chapter has been paid.

* * * * *

10. By revising § 65.15 to read as follows:

§ 65.15 Duration of certificates.

(a) Except for repairman certificates, a certificate or rating issued under this part is effective until it is surrendered, suspended, or revoked.

(b) Unless it is sooner surrendered, suspended, or revoked, a repairman certificate is effective until the holder is relieved from the duties for which the holder was employed and certificated.

(c) The holder of a certificate issued under this part that is suspended, revoked, or no longer effective shall return it to the Administrator.

PART 67—MEDICAL STANDARDS AND CERTIFICATION

11. By revising § 67.11 to read as follows:

§ 67.11 Issue.

Except as provided in § 67.12, an applicant who meets the medical standards prescribed in this part, based on medical examination and evaluation of his history and condition, is entitled to an appropriate medical certificate.

12. By adding a new § 67.12 to read as follows:

§ 67.12 Certification of foreign airmen.

A person who is neither a United States citizen nor a resident alien is issued a certificate under this part, outside the United States, only when the Administrator finds that the certificate is needed for operation of a U.S.-registered civil aircraft.

PART 145—REPAIR STATIONS

13. By revising § 145.13 by adding a sentence at the end to read as follows:

§ 145.13 Certification of foreign repair stations: Special requirements.

* * * In addition, the applicant must furnish evidence that the fee prescribed by Appendix A of Part 187 of this chapter has been paid.

PART 187—FEES

14. By revising § 187.15 to read as follows:

§ 187.15 Payment of fees.

The fees prescribed in this part are payable to the Federal Aviation Administration by check, money order, or draft payable in U.S. currency and drawn on a U.S. bank.

15. By adding a new Appendix A to Part 187 to read as follows:

Appendix A: Fee Schedule for Certification Services Performed Outside the United States on Behalf of Foreign Nationals Other Than Resident Aliens

(a) Except as provided in paragraph (e), the fees for certification and additional ratings issued under Part 61 of this chapter are as follows:

(1) Each student pilot certificate issued by the FAA, $14.

(2) Each student pilot certificate issued by a Designated FAA Examiner, $11.

(3) Each certificate issued under § 61.75 or § 61.77, $11.

(4) Each written test administered by the FAA for any certificate or added rating, $19.

(5) Each practical test (oral or flight or combined oral and flight) administered by the FAA for a private pilot certificate or added rating, $130.

(6) Each practical test (oral or flight or combined oral and flight) administered by the FAA for a commercial pilot certificate or added rating, $159.

(7) Each practical test (oral or flight or combined oral and flight) administered by the FAA for an airline transport pilot certificate or additional rating, $225.

(8) Each practical test (oral or flight or combined oral and flight) administered by the FAA for a flight instructor certificate or added rating or exchange of certificate under § 61.199, $171.

(9) Each practical test (oral or flight or combined oral and flight) administered by the FAA for renewal of a flight instructor certificate under § 61.197, $70.

(10) Processing of each written or practical test (oral or flight or combined oral and flight) administered by a Designated FAA Examiner for any pilot certificate or added rating, $37.

(b) Except as provided in paragraph (e), the fees for certification and additional ratings issued under Part 63 are as follows:

(1) Each written test administered by the FAA, $29.

(2) Each practical test administered by the FAA, $508.

(3) Processing of each practical test administered by a Designated FAA Examiner, $37.

(4) Each certificate issued under § 63.23 or § 63.42, $37.

(c) The fees for certificates and additional ratings issued under Part 65 are as follows:

(1) Each initial Inspection Authorization certificate issued under § 65.91, $291.

(2) Each practical test administered by the FAA for a mechanic certificate with an airframe rating or for an added airframe rating, $409.

(3) Each practical test administered by the FAA for a mechanic certificate with a powerplant rating or for an added powerplant rating, $308.

(4) Processing of each practical test administered by a Designated FAA Examiner for any certificate or added rating, $27.

(d) Hourly rates for certification actions under § 145.71 are as follows:

(1) $47. for each technical hour.

(2) $14. for each clerical hour.

(e) The fees for the initial airman certificates for which evidence of medical qualification is provided by an FAA medical certificate are as follows:

(1) Each initial student pilot certificate issued by FAA, $22.

(2) Each initial student pilot certificate issued by a Designated FAA Examiner, $19.

(3) Each initial certificate issued under § 61.75 or § 61.77, $19.

(4) Each initial certificate issued under § 63.23 or § 63.42, $45.

(Secs. 313, 601, 602, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1421, and 1422); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Title V, Independent Offices Appropriations Act of 1952 (31 U.S.C. 483(a)); sec. 28, International Air Transportation Competition Act of 1979 (49 U.S.C. 1159(b)))

NOTE.—Since compliance with these amendments will have only a minimal cost impact on the maintenance of U.S.-registered aircraft overseas and will not otherwise impose any cost or other economic burden on U.S. citizens, it has been determined that they are not major regulations under Executive Order 12291 and, for the same reason, it is certified that, under the criteria of the Regulatory Flexibility Act, they will not have a significant economic impact on a substantial number of small entities. The FAA has determined that this document involves regulations which are not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, the FAA has determined that the expected impact on U.S. citizens of the regulations is so minimal that they do not require an evaluation.

Issued in Washington, D.C., on July 21, 1982.

J. Lynn Helms,

Administrator.

[FR Doc. 82-22220 Filed 8-13-82; 8:45 am]

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federal register

Monday
August 16, 1982

Part VIII

Department of the Interior

Office of the Secretary

Federal Flood Insurance Prohibition for Undeveloped Coastal Barriers; Proposed Identification and Submission of Report to Congress

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Subtitle A

Federal Flood Insurance Prohibition for Undeveloped Coastal Barriers; Proposed Identification

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of proposed action—proposed substantive and procedural standards for the designation of undeveloped coastal barriers; proposed "Definitions and Delineation Criteria" and proposed designations.

SUMMARY: Under the provisions of Section 1321 of the National Flood Insurance Act of 1968, as added by Part 4, section 341, of the Omnibus Budget Reconciliation Act of August 13, 1981, the Secretary of the Interior is required to designate undeveloped coastal barriers. These designations will eliminate new National Flood Insurance coverage on or after October 1, 1983, for any new construction or substantial improvements of structures located on these undeveloped coastal barriers.

This proposed rule makes available *substantive* and *procedural* standards for the designation of undeveloped coastal barriers. This document explains the procedural standards being followed for the proposed designations and provides the substantive standards being utilized for such designations. Consistent with these proposed standards, a listing of proposed designations is also provided and proposed maps depicting these areas made available. Public review and comment is solicited on each of these elements including the maps specifically depicting the proposed designations.

As with the previous draft definitions and draft maps provided on January 15 and May 21, 1982, for public review and comment—47 FR 2381, 47 FR 22231—this release provides both the proposed definitions and the proposed designations at the same time. This process has been adopted to provide the public with a meaningful comment period on both proposals. It is exceedingly difficult to understand the impact of these definitions without also seeing how they would be applied on the ground. By incorporating both steps together, the public will have a more realistic opportunity to comment on the Department's proposed course of action. Finally, to place this entire process in context, the procedures that the Department intends to follow in meeting its designation responsibilities have also been included and comments requested.

DATE: Comments should be received no later than November 13, 1982.

ADDRESS: Mr. Ric Davidge, Chairman; Coastal Barriers Task Force; United States Department of the Interior, Room 3148, Main Interior Building, 18th & C Streets NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Lanzone, Manager, Coastal Barriers Task Force; United States Department of the Interior, Room 3149, Main Interior Building, 18th & C Street NW., Washington, D.C. 20240. (202) 343–4905.

SUPPLEMENTARY INFORMATION: (1) This proposed action has been determined to be in the nature of a rulemaking. Accordingly, the document is drafted in the nature of a proposed rulemaking (and referred to as a proposed rulemaking) consistent with the Departmental Manual provisions relating to rulemaking, 318 DM 1–10, requirements and the Administrative Procedure Act. It has also been determined, however, that designation of undeveloped coastal barriers pursuant to the Reconciliation Act is a one-time action by the Department of the Interior and that, accordingly, the codification of this process or the results thereof in the Code of Federal Regulations is not anticipated. It is for this reason that notice of this proposed action, and the opportunity for public review and comment, has not been provided as a proposed Code of Federal Regulations document.

(2) *Prior releases.* This proposal is the culmination of an intensive one year effort to develop a proposed action to implement the flood insurance provisions of the Reconciliation Act. It parallels the independent submission to the Congress of these proposed designations as well as a report on the "findings and conclusions" of the study upon which the proposed designations are based, as required by the Reconciliation Act. This effort has been chronicled by information provided to the public through **Federal Register** announcements. These releases should be reviewed for supplementary and background information. *See,* Notice of Intent to issue proposed rule, 46 FR 58346, December 1, 1981; Proposed rule; amendment, 46 FR 60022, December 8, 1981; Notice of Availability of Draft Document, 47 FR 2382, January 15, 1982; Notice of Availability of Draft Environmental Impact Statement and Additional Draft Maps, 47 FR 22231, May 21, 1982; Update of Notice of Intent to issue proposed rule, published in this issue of the **Federal Register.**

(3) *Delegation of Secretarial Authority.* The Secretary of the Interior has delegated to the Assistant Secretary for Fish and Wildlife and Parks his authority to direct and coordinate the implementation of the undeveloped coastal barrier provisions of the Reconciliation Act. This responsibility is being managed through the Coastal Barrier Task Force.

(4) *Environmental Effects.* As indicated previously, a Draft Environmental Impact Statement (DEIS) was issued on May 21, 1982, with regard to the proposed designation of undeveloped coastal barriers in accordance with the National Environmental Policy Act of 1969 (83 Stat. 852; 42 U.S.C. 4321, *et seq.*). The designations proposed herein are within the range of alternatives considered by that DEIS and generally consistent with the preferred alternative provided therein. Based upon the DEIS, and the range of comments received on it, it has been determined that this action will constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969. A Final Environmental Impact Statement will be prepared preceding the final designation of undeveloped coastal barriers. A copy of the DEIS as issued on May 21, 1982, 47 FR 22071, may be obtained through the Addresses section of this preamble.

(5) *Statement of Effects.* The Department of the Interior has determined that this document is not a major rule under E.O. 12291, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A copy of the combined document supporting these determinations may be obtained through the Addresses section of this preamble.

(a) The practical effect of the rule will be to transfer the risks of flood damage in the designated areas from the Federal government back to the private sector, i.e., the landowner, developer or insurance industry, in essence returning to the conditions that existed prior to the enactment of the NFIA in 1968.

It is important to reiterate that designation pursuant to the Act does not preclude development of coastal property: designation will affect, i.e. prevent, only the sale of new Federal flood insurance for new construction of or substantial improvements to structures in those specific areas after October 1, 1983. Lending institutions will be able to finance construction on the designated barriers. Other Federal programs in the designated areas remain constant. For example, despite the fact

that flood insurance will be denied in designated areas, the Federal government can continue to offer disaster relief assistance in those areas in the event of a major storm or hurricane. This assistance, however, is typically in the form of a loan which must be repaid, unlike an insurance claim paid under the NFIP.

Homeowners' insurance coverage, available through private insurers, which has traditionally covered liability for fire, theft and wind damage but not flood damage, should continue to be available on undeveloped coastal barriers. Other forms of insurance contracts, such as insurance for crop loss, marine cargo, and personal liability, should not be affected by this rule. In addition, the private insurance industry will be provided a market and may begin to provide coverage for flood damage. Finally, a landowner's liability may be decreased to the extent that the casualty loss provisions of the Internal Revenue Code would apply in the event of a storm loss.

There are 285 square miles of fastland on undeveloped coastal barriers along the Atlantic and Gulf Coasts. For the purposes of analysis, it has been assumed that if development in this area containued without any change or interruption, e.g., as if the Act had not been passed, it would be proportional to that which has taken place on the developable V-zone land since Federal flood insurance became available.

Given the parameters of the specific analytic assumptions outlined in the Determination of Effects, including a 10% discount rate (as prescribed in OMB Circular A–94), 1982 dollars and a gross annual growth rate of structures of about 24%, the annualized discounted value of the foregone development is approximately:

—$15 million in 5 years.
—$19 million in 10 years.
—$31 million in 15 years.
—$50 million in 20 years.

Therefore, because the gross annual economic effects under a "worst-case" analysis will not exceed $100 million and because coastal barriers have historically been developed with or without Federal flood insurance, indicating that development opportunities should not be dramatically precluded by this rule, it is determined that this is not a major rule.

(b) 79 of the 1138 counties within the 18 Atlantic and Gulf Coast states will be affected by the proposed rule. This represents 6.9% of the Atlantic and Gulf Coast total counties, and is based on the draft delineations released for public review and comment on January 15, 1982. Of the 159 maps released at that time, 72 were commented on by the public.

The potential economic growth of some of the local communities containing designated undeveloped coastal barriers may be reduced under the proposed rule *if* the designated coastal barrier provides a significant percentage of the overall tax base of the community. The amount of employment, market stimulation and tax revenue foregone will be greatest in areas where property values are high, development pressure is great, and a major portion of the designated land is stable and suitable for development. These conditions apply primarily to units along the coasts of North Carolina, South Carolina, Florida's Gulf Coast and Texas. The impacts of foregone development will be much lower in places where local and state regulations severly constrain development, and/or where most remaining undeveloped coastal barriers are unsuitable for development. On or both of these conditions apply to most of the coastal barriers in the New England States, New York, New Jersey, Georgia, and Louisiana.

The proposed rule may result in foregone employment and stimulation of local markets due to a decrease in construction activity and the economic development of the coastal barriers themselves. Some of these foregone economic benefits will be counterbalanced by increased employment in developed and developing coastal barriers not proposed for designation. Additionally, the continued maintenance of aquatic habitat would reduce development-related losses for the fish and shellfish industries, which depend on the perpetuation of natural coastal barrier ecosystems for sustaining productivity. Further, the occurrence of a catastrophic storm could readily obliterate economic benefits associated with development and cause the barrier to become a significant drain upon the community's resources for many years.

Limited short-term stimulation of local construction industries and related markets should result as developers accelerate construction schedules to have structures started by October 1, 1983, the cut-off date for purchasing Federal flood insurance on the designated undeveloped coastal barriers. Following that date, the significance and duration of any decline in economic growth will depend on the nature and timing of private sector actions to provide flood insurance and development financing.

Further, as stated in greater detail in the economic analysis, development has occurred in coastal areas for many years longer than Federal flood insurance has been available. Other Federal programs that may affect development remain constant in these areas under this Act. Small business loans, for instance, are not affected by the statutory language of the Act. Nor does the statute affect an individual's right to develop in those areas designated as undeveloped coastal barriers. It only restricts the sale of Federal flood insurance in the designated areas. This rule will, in effect, return to conditions that existed prior to 1968 by transferring most of the risk of flood damage associated with coastal development to the private sector.

Therefore, it is determined that this rule will not have a significant economic effect on a substantial number of small entities.

(6) *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

(7) *Authorship Statement.* This document has been prepared by the Coastal Barriers Task Force within the Department of the Interior. The Chairman of the Task Force is Mr. Ric Davidge, Office of the Assistant Secretary for Fish and Widlife and Parks.

(8) *Maps.* This proposal provides a listing of proposed designations by State, unit name, and unit number and refers to a more precise description of these proposed designations as depicted on a series of maps available through the U.S. Geological Survey. The reference to these maps is necessitated by the sheer bulk of these maps and by the difficulty of printing them through the **Federal Register** in a readable format. The proposed "Definition and Delineation Criteria" are the substantive standards for these proposed designations. They have been included as an Appendix to this document. Maps may be obtained through the U.S. Geological survey as provided by the attached order blank. A copy the proposed "Definition and Delineation Criteria" will also be included with each order. It has been determined by the Department of the Interior that these proposed maps will be reasonably available in the manner provided herein.

(9) *Identification of Issues.* By and large, the Reconciliation Act mandate for the Secretary of the Interior to designate undeveloped coastal barriers is clear and direct. To be designated, an area must be both a "coastal barrier" and "undeveloped" as further provided in the Appendix. There are, however,

several issues that merit attention because they are not immediately obvious but are important to this process.

The first issue concerns the date that should be used to establish the development status of coastal barriers. This issue was subject to extensive discussion in the Department's original Notice of Intent to issue a proposed rule, as published on December 1, 1981, 46 FR 58346. At that time it was determined—and the public was notified—that the *proposed* designations would be based upon a March 15, 1982 status on-the-ground date. This conclusion has not changed. Unlike the earlier notice, however, the Department no longer proposes to consider other dates with regard to the *final* designation and specifically encourages comment on this issue.

The second issue concerns notice and public participation. As indicated above, the events leading to this proposed action have been extensively publicized. In addition to the **Federal Register** releases, the Department has written to the Governors of the affected States and to concerned Members of Congress about this process at each major step and has also provided detailed draft information for their consideration on two specific occasions. Intergovernmental review was requested pursuant to letters from the Secretary of the Interior dated December 9 or 10, 1981, and once again at the end of June of 1982. These intergovernmental review letters also encouraged public participation and all comments that were received as a result of these intergovernmental coordination efforts have been carefully considered. Once again at this stage, notice and an opportunity for meaningful public participation have been carefully considered and provided.

The third issue concerns the relationship of this proposed action to the Coastal Zone Managment Act (CZMA). Section 307(c)(1) of that Act requires that Federal actions be consistent with approved Coastal Zone Management Plans. This provision is as follows:

> Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs.

The issue centers upon the relationship between the requirements of the Reconciliation Act to designate undeveloped coastal barriers and the consistency provisions of the Coastal Zone Management Act. Throughout the majority of the extensive opportunity for participation, as indicated above, the various States had not expressed a concern about this issue. Very recent comments would suggest, however, that this may now be an issue with some States or local jurisdictions. Accordingly, the Department is now preparing individual letters to be provided to each State with an approved CZMA plan concerning this factor. A minimum of ninety days will be provided for State review before final Federal action will take place by this Department.

The fourth issue concerns "phased development". As with the January 15, 1982 draft definitions, the phased development concept remains in this proposal. The rationale of this concept was discussed in detail—as a part of a larger discussion concerning the meaning of the term "undeveloped" in the Reconciliation Act—in a hearing on February 3, 1982, before the Senate Committee on Environment and Public Works, Subcommittee on Environmental Pollution, with regard to the Department's January 15, 1982 draft definitions. At that time, the Chairman of the Coastal Barriers Task Force testified as follows:

> Further elaboration of the concept of "undeveloped" has been of threshold concern to us. Initially, there was a question of whether permits, approved development plans, or other legal indicators of an intent to develop should be considered as constituting "structures" or "man's activities" within the meaning of the statute. Neither the specific language of P.L. 97–35, nor its legislative history, support reliance on any development that is not visible on the ground. The existence of a legal right to develop is simply not addressed in the Act. Accordingly, for purposes of these draft definitions and draft maps we have concluded that Congress, in enacting the Reconciliation Act, did not intend us to consider such documentary evidences of future development. In lieu, Congress provided a delay in the date for terminating the availability of Federal flood insurance until October 1, 1983, as a means of dealing with ongoing projects. A developer with the legal right to develop can do so before that date and still be eligible for Federal flood insurance coverage.
>
> In the context of the statutory definition, the use of the term "structure" clearly refers to a building with walls and a roof. In general, we have used a density threshold of more than one structure per five acres of fastland to categorize a coastal barrier as developed. This standard is cited in the legislative history and has been used in previous Interior Department delineations. From experience we know that the number of structures and the associated levels of human activity at densities greater than this threshold tend to interfere with the natural processes which build and maintain coastal barriers.
>
> In addition, however, the legislative history of this provision also contemplated that the actual existence of "infrastructure"—a concept we have defined to mean access to each lot or building site plus the reasonable availability of some combination of utilities and services—would serve in lieu of the actual existence of structures themselves.
>
> As a basic rule, the application of the "structure" and "infrastructure" concepts have been applied to each discrete segment of a coastal barrier unit. In our draft defintions, discrete segments have been defined as areas that are set off by natural breaks or by intervening areas that are otherwise protected or clearly developed.
>
> There is one exception to this concept, applicable to large single ownerships that are in the process of being developed under a phased development plan. We have not created a new discrete segment at the edge of a clearly developed area in those cases where: (1) Initial construction has been completed on at least the first phase of such a large project involving 100 or more building sites being developed by one entity; and (2) phasing of development has been publicly documented from the outset of the project. Instead, the remaining portion of that single ownership has been considered an integral part of the development.
>
> There are three reasons for this approach. First, it was the practice in a previous delineation of undeveloped coastal barriers. Second, it is not inconsistent with the statute and follows the intent of Congress to provide a transition period for development. Finally, because the edge of a developed area typically represents a break in ownership and a break in the linkage between developed and undeveloped areas, the use of the edge of clearly developed areas to determine discrete segments is a pragmatic and practicable approach. In the phased development situation this is not true; there is no break in ownership at the edge of an area that has been developed. Rather, there is a large remaining portion of that ownership that has been planned for development on a phased timetable.
>
> The phased development concept is not based upon permits or legal rights that these projects may or may not have, but merely on the size of the project and the expectation from its outset, well prior to passage of the Reconciliation Act, that the entire project could be completed as planned. As a practical matter, this criterion applies to just three coastal barriers involving only about 2,000 acres, compared to the more than 700,000 acres encompassed by our draft maps.

This explanation remains applicable to the proposed definitions. It is true, however, that with the proposed designations the number of areas impacted by this concept has expanded to 10 areas and that the Department remains concerned about the application of this concept in a fair and evenhanded manner. The actual on-the-ground relationship between phases substantially completed and phases planned may be a key element.

Measures to ensure the actual existence of this interrelationship on-the-ground remain under consideration. Once again, specific comments are invited on this difficult issue.

The fifth issue concerns coastal barriers located within "embayments". Both the proposed definitions and the proposed designations now recognize coastal barriers located within embayment areas that are directly subject to wind, wave, and tidal energy of oceanic origin to be within the purview of the Reconciliation Act. Ten new units have been proposed for designation based upon this criteria.

Based upon the January 15, 1982 draft definitions, representatives of five Northeastern states and others have recommended quite a few areas located in embayments be designated as coastal barriers. The State of Massachusetts has also addressed the issue of embayments directly.

These concerns have been carefully considered. The proposed definitions and proposed designations are based upon the Department's finding that exposure to significant levels of wave energy originating in the Atlantic Ocean or Gulf of Mexico should be the principal criterion for determining whether an area should be considered a coastal barrier rather than its location in relation to embayments.

Sections of coastline referred to as bays or sounds based on historic usage do not necessarily fit the classic perception, let alone the technical use, of these terms. Many were named by the first European explorers, individuals with diverse backgrounds and traditions, based on their initial impressions and incomplete information rather than on technical criteria and as part of an orderly process. Hence, little reliance can be placed on names of coastal features to distinguish embayments from the true coastline. Some open coastline areas are called bays and some very restricted areas are given other names. While the scientific/technical definitions of these terms are fairly precice, their applications would still result in major segments of coast containing features almost universally recognized as coastal barriers which are subject to significant sea energies being considered as bays.

Under the present proposal, coastal barriers are presently being delineated, consistent with the OBRA definition, only if they are subject to sea (i.e., wave) energy originating in the Atlantic Ocean or the Gulf of Mexico. This requirement precludes the inclusion of barriers in closed bays. The entrances to "* * * large embayments * * * such as Chesapeake Bay * * *" referenced in the proposed definitions document are small in relation to the total extent of these vast bodies of water. Hence, virtually all the wave energy responsible for creating and/or maintaining any coastal barrier-like features in these large embayments is probably generated internally. It was for this reason that coastal barriers in these large, closed embayments were excluded in the draft definitions document released in January. This is consistent with the legislative history on this point. There has been no change in this practice; coastal barrier-like areas within embayments not subject to direct sea energy have not been proposed for inclusion.

Conversely, coastal barrier-like features that are the product of wave energies originating at sea have been proposed for inclusion even if they are located in a bay. The embayed coast of Maine is a good example. In this situation, sea energy has ready access to and usually dominates these bays through their comparatively large, open entrances. Such wave energy can often penetrate a considerable distance into such bays if not obstructed by numerous islands or a change in orientation of the bay. In fact, as the recent State of Massachusetts comments point out, there may even be an increase in sea energy. Sea energy may be concentrated on a smaller area when constricted by the narrowing bay.

The difficult question, however, concerns how far into such open bays sea energy of sufficient magnitude to create and maintain coastal barriers extends. As with the basic definition of coastal barriers themselves, this question can only be answered with on-site evidence. A linear mound of unconsolidated sediment indicates a significant level of sea energy impinges on that site. The nature of the aquatic system seaward of the coastal barrier-like feature also provides some indication of whether significant sea energy is reaching the barrier feature. Deep, open water probably facilitates penetration of sea energy. On the other hand, emergent vegetation seaward of the fastland portion of the barrier clearly indicates that little, if any, sea energy reaches the fastland. Subtidal shoaling and tidal flats would not preclude the penetration of waves generated as sea, particularly under storm conditions. The configuration of the bay, including the islands in it, and its orientation with respect to prevailing and storm winds also influence the magnitude and distance that sea energy penetrates the bay. For instance, an *abrupt* narrowing or change in direction of a bay may be sufficient to exclude most, if not all, sea energy.

In addressing the embayments issue for this proposal, physical location of a coastal barrier has not been the key criterion. Instead, a significant level of sea energy impinging on an area, including one located in an open bay, has been the primary consideration. This still precludes the inclusion of barriers located in large, closed embayments where wave energy is, for the most part, generated internally, e.g., Chesapeake Bay. Areas located in open bays that otherwise qualify as coastal barriers have been proposed to be designated. Such an approach is also consistent with the Congressional intent that areas proposed for designation as undeveloped coastal barriers be subject to wave energy from the Atlantic Ocean or Gulf of Mexico.

The final issue concerns the delineation of a rearward, or landward, line on the proposed designations. The establishment of a rearward boundary for each undeveloped coastal barrier unit is discussed in detail in the "Definitions and Delineation Criteria". It is also a subject of some concern in the Report being provided separately to the Congress. The issue is whether these rearward lines properly include all "associated aquatic habitat" as directed by the Reconciliation Act. Numerous comments have been received concerning the "associated aquatic habitat" requirement. Specific comment on this issue is encouraged.

(10) *Public Participation.* The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding the proposed rule to the individual and location identified in the Addresses section of this preamble and below. Comments must be received on or before November 13, 1982.

(11) *Identification of Subjects.* An identification of subjects is not necessary because this proposed document is not designed to be codified in the Code of Federal Regulations. Under the Reconciliation Act, the designation of undeveloped coastal barriers is a one-time action that will be completed with final designation.

It is proposed that the Department of the Interior will designate undeveloped coastal barriers as provided by Section 1321 of the National Flood Insurance Act of 1968 consistent with the following procedural and substantive standards. Consistent with these standards it is also proposed that the hereinafter listed

series of areas, as precisely depicted on the maps referred to herein, shall be designated as undeveloped coastal barriers. Because this action of designating undeveloped coastal barriers under the Reconciliation Act is a one-time process, it is not proposed to codify this proposed course of action in the Code of Federal Regulations.

Part I—Process of Designation—Procedural Standards
Part II—Proposed "Definitions and Delineation Criteria", substantive standards, Appendix A
Part III—Proposed Designations—Listing and Availability of Specific Maps, Appendix B.

(Sec. 1321 of the National Flood Insurance Act of 1968, as added by Part 4, section 341, of the Omnibus Budget Reconciliation Act of August 13, 1981)

Part I—Process of Designation—Procedural Standards

The Department of the Interior has determined that the designation of undeveloped coastal barriers as required by the Reconciliation Act is in the nature of a rulemaking (but not an adjudication) consistent with the Administrative Procedure Act and 318 DM 1–10 of the Departmental Manual as approved on June 30, 1982. Accordingly, the procedural standards discussed by that Departmental Manual release, as further articulated by this proposal, will be implemented as follows:

(1) Final designation of undeveloped coastal barriers is being preceded by notice and an opportunity for public comment on a proposed action through this publication in the **Federal Register**. This includes both proposed designations and the substantive standards that are being applied in developing such proposed designations. A general listing of the proposed designations has been included; specially printed U.S. Geological Survey maps delineating these proposed designations in specific detail are being made available for purchase as further provided herein. Notice and opportunity to comment is being provided pursuant to this release for a period of 90 days.

(2) Notice of this proposed action through publication in the **Federal Register** will be supplemented by an extensive mailing to all persons that have expressed an interest to the Department on the coastal barrier issue. Submission of the proposed designations to the Congress and publication in the **Federal Register** will be accompanied by a large scale distribution to all those on the Department's coastal barrier mailing list—all affected State and local governmental entities as well as any one that has expressed an interest in the issue—of this document. A notice will also be provided in local newspapers of general circulation that cover the areas proposed for designation consistent with 318 DM 6.4E(2). State and Congressional assistance will also be encouraged to notify affected persons. Once again, these actions are being undertaken at this time with this release.

In addition, as with the January 15 release, both the proposed definitions and the proposed maps are being sent to a number of classes of recipients with special interest in this issue. The Secretary of the Interior has suggested that these recipients seek the widest possible distribution of these documents. The classes of recipients of these materials include:

—Senators and Members of Congress from the 16 affected States
—U.S. Fish and Wildlife Service
  —Washington Office
  —Regional Offices
  —National Coastal Ecosystems Team
—National Park Service
  —Washington Office
  —Regional Offices
—Federal Emergency Management Agency
  —Washington Office
  —Regional Offices
—Other Federal Agency Washington Offices
  —Deparment of Commerce
  —U.S. Army Corps of Engineers
  —Office of Management and Budget
  —Department of Transportation
  —Department of Housing and Urban Development
—State and local Governmental Entities
  —Governors of the 16 affected States
  —A–95 Clearinghouses of the 16 affected States
  —Affected Local Governments
  —Affected Regional governmental entities

To facilitate public review, the Department has established a system whereby anyone interested may learn where the closest set of propsed maps can be examined. This can be accomplished by calling the U.S. Geological Survey, Eastern National Cartographic Information Center (E–NCIC), at (703) 860–6336 or FTS: 928–6336 between the hours of 8:00 a.m. and 4:00 p.m. EDST/EST. Callers must indicate the State and County in which the units of concern are located as well as where they are located. PLEASE NOTE: Maps cannot be ordered by calling this telephone number.

(3) The Department will review the public comments received and consider them.

(4) Final designation will be made pursuant to notice of a final rulemaking in the **Federal Register** and as provided above.

(5) Notwithstanding any other provision of Departmental practice, following final designation landowners and other persons having an interest in areas that have been subject to a final designation will be provided the opportunity to petition for a change in that designation within the Department. That petition will apply to the factual basis for the designation in question as reflected in the individual memorandum prepared to establish the final designation of that area, as well as the unit file. This petition will be limited to factual issues raised by the petitioner during the comment period on the proposed action.

Such a petition will be conducted in writing and must be initiated within 45 days of the Department's notice of final designation pursuant to a letter to the Secretary of the Interior outlining the factual error(s) relied upon for the requested change in designation. The Office of the Assistant Secretary for Fish and Wildlife and Parks will be responsible for review of each petition and for submission of an analysis of the petition and a recommended decision to the Secretary. This petition process shall be the sole and exclusive review procedure provided by the Department of the Interior.

(6) The date upon which the Department will establish the development status of coastal barrier areas is proposed to be March 15, 1982, consistent with the Department's original notice of intent to issue proposed rule, as published on December 1, 1981, 46 FR 58346.

Part II—Proposed "Definitions and Delineation Criteria", Substantive Standards, Appendix A.

The Department proposes to designate undeveloped coastal barriers consistent with "Definitions and Delineation Criteria" similar to those released in draft on January 15, 1982 for 90 days public review and comment. A proposed version of those criteria have now been completed for public review and comment through November 13, 1982. As with the January 15 Draft release, these proposed criteria have been applied to specific on-the-ground situations to establish proposed designations. It is only in this manner that the impact of the proposed definitions can be evaluated in any meaningful way by the

public. A copy of the "Definitions and Delineation Criteria" document is attached hereto as Appendix A. Additional copies may be obtained as provided in the Addresses section of this preamble and below. In addition, a copy of this proposed document will be provided with every map order received, as also explained below.

Part III—Proposed Designations—Listing and Availability of Specific Maps, Appendix B.

A listing by State and unit name and number of all proposed designations of undeveloped coastal barriers is attached hereto as Appendix B. These proposed designations are based upon the application of the "Definitions and Delineation Criteria" to actual on-the-ground situations. These proposed designations are further and specifically delineated on a series of maps being published by the U.S. Geological Survey, entitled and identified as provided by Appendix B. Information on ordering these maps from the U.S. Geological Survey is included below.

All units herein proposed for designation, or portions there of, have, with only 10 exceptions been previously included in either the January 15, 1982, or May 21, 1982, draft maps. Proposed maps being provided for public review for the first time, the 10 exceptions referred to above, all concern areas that are located within embayment areas that are directly subject to wind, wave and tital energy of oceanic origin. These types of areas had not previously been considered. The basis for the proposed inclusion of embayment type areas is found in the "Definitions and Delineation Criteria".

Where applicable, unit names and numbers have not been changed from the draft maps provided on January 15, 1982 or May 21, 1982. A proposed definitions document will be provided with each map order.

Ordering and Comments:

Proposed undeveloped coastal barrier maps can be purchased from the U.S. Geological Survey at the address indicated below. To cover reproduction and handling costs, a fee of $3.25 will be charged per map for each 36 in. × 42 in. paper ozalid copy. Requests for copies must be made using the following ORDER FORM (or a copy thereof) and must be prepaid by check or money order (NO cash or stamps) made payable to: THE UNITED STATES GEOLOGICAL SURVEY. The ORDER FORM and check or money order should be sent to: Eastern National Cartographic Information Center (E-NCIC), U.S. Geological Survey, 536 National Center, Reston, Virginia 22092.

Once again, each proposed map order will include a copy of the proposed definitions.

Requests for additonal copies of the proposed definitions document should be made in writing as provided in the Addresses section of this preamble and below.

Comments on the proposed designations and maps; the proposed definitions; or, the procedural standards proposed herein should be addressed to: Mr. Ric Davidge, Chairman, Coastal Barriers Task Force, United States Department of the Intereior, Washington, D.C. 20240.

Maps may be inspected at and hand-delivered comments may be taken to: Office of the Assistant Secretary for Fish and Wildlife and Parks, Main Interior Building, 18th and C Streets NW., Room 3148, Washington, D.C. 20240. Copies of the proposed definitions will also be available for distribution at this location.

Dated: August 11, 1982.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

Appendix A. Undeveloped Coastal Barriers: Definitions and Delineation Criteria

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Undeveloped Coastal Barriers: Definitions and Delineation Criteria

Introduction

Section 341(d)(1) of the Omnibus Budget Reconciliation Act of 1981 (OBRA—Pub. L. 97–35; 95 Stat. 419) established a new Section 1321 of the National Flood Insurance Act of 1968 (NFIA). Section 1321(a) provides that no new Federal flood insurance coverage shall be provided on or after October 1, 1983, for any new construction or substantial improvements of structures located on undeveloped coastal barriers which shall be designated by the Secretary of the Interior. The designation of undeveloped coastal barriers by the Secretary shall be based on the definition provided in Section 1321(b) of NFIA which states:

"For purposes of this section—

(1) The term 'coastal barrier' means—

(A) A depositional geologic feature (such as a bay barrier, tombolo, barrier spit, or barrier island) which—

(i) Consists of unconsolidated sedimentary materials,

(ii) Is subject to wave, tidal, and wind energies, and

(iii) Protects landward aquatic habitats from direct wave attack; and

(B) All associated aquatic habitats including the adjacent wetlands, marshes, estuaries, inlets, and nearshore waters;

(2) A coastal barrier or any portion thereof shall be treated as an undeveloped coastal barrier for purposes of subsection (a) only if there are few manmade structures on the barrier or portion thereof and these structures and man's activities on the barrier do not significantly impede geomorphic and ecological processes; and

(3) A coastal barrier which is included within the boundaries of an area established under Federal, State, or local law, or held by a qualified organization as defined in section 170(h)(3) of the Internal Revenue Code of 1954, primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes shall not be designated as an undeveloped coastal barrier for purposes of subsection (a)."

This definition of an undeveloped coastal barrier was not a new creation of the drafters of Section 1321 of NFIA. Rather, it incorporates portions of, and is otherwise adapted from, the definition in the proposed Coastal Barrier Resources Act (CBRA—see S. 1018 or H.R. 3252 as introduced in the 97th Congress) which was itself a product of earlier consideration of this issue by the Congress and the Department of the Interior. H.R. 3252 was introduced in the House on April 27, 1981, by Congressman Thomas B. Evans, Jr. of Delaware, one of the co-sponsors of what is now Section 1321 of NFIA. The companion bill in the Senate, S. 1018, which was introduced by Senator John H. Chafee of Rhode Island on April 28, 1981, contains definitions identical to those in H.R. 3252. The relationship between Section 1321 of NFIA and S. 1018 was described by Senator Chafee on the floor of the Senate during debate on the OBRA Conference Report (*Congressional Record*, July 31, 1981, page S9000).

Once again, the legislative history of the OBRA provision and the pending Coastal Barrier Resources Act (S. 1018, H.R. 3252) demonstrate that the definition in Section 1321(b) of NFIA was derived by the Congress based on work by the Department of the Interior in a series of efforts beginning in 1977 to delineate coastal barriers. These efforts were in response to several past executive and legislative initiatives. The relationship of the definition in OBRA to this previous work is cited in its legislative history including:

- The report on the House-passed Budget Reconciliation bill (House Report 97–158, Volume I, page 100);
- The conference action on OBRA (House Report 97–208, Book Two, July 29, 1981, page 712), and
- In floor remarks by one of the House conferees for the OBRA bill who was also a coauthor of Section 341(d)(1) and (2) (*Congressional Record*, July 31, 1981, page H5792).

When the House-Senate Conference Committee took up the Budget Reconciliation bill in July 1981 to resolve differences between the two versions, the Senate version did not contain a provision concerning undeveloped coastal barriers (House Report 97–208, Book Two, July 29, 1981, page 711; and *Congressional Record*, July 31, 1981, page S9043). Hence, there is little legislative history in the Senate about the derivation and evolution of the definitions of undeveloped coastal barriers with regard to the OBRA legislation. However, the role of previous work by the Department of the Interior to define and delineate coastal barriers was recognized in the Conference Report by Senate as well as House managers as pertinent to the task of designating undeveloped coastal barriers required under Section 341(d)(1) and (2) of OBRA (House Report 97–208, Book Two, July 29, 1981, page 712).

The managers' statement, however, resulted in some confusion about the intent of the Conferees. Concern was expressed on the floor of the Senate prior to enactment of OBRA as to whether coastal barriers previously identified and mapped by the Department of the Interior as undeveloped were to be a principal basis for the Secretary's designation of undeveloped coastal barriers (*Congressional Record*, July 31, 1981, page S9043). The same question was asked on the floor of the House (*Congressional Record*, July 31, 1981, page H5793). Both Senate and House Conferees responded to these questions by reiterating or referring to the report of the managers of the bill in the Conference Report on OBRA which states "* * * the Conferees expect the Secretary to review carefully the definition contained in section 1321 in preparing the report of findings and proposed designation of areas covered in this section." (House Report 97–208, Book Two, July 29, 1981, page 712). Consequently, the areas to be designated by the Secretary of the Interior need not be identical to those identified previously.

On January 15, 1982, a draft version of these Undeveloped Coastal Barrier Definitions and Delineation Criteria was made available for public review and comment. A large number of comments were received and have been considered in the preparation of this document.

The purpose of this document is to present a complete and concise statement of definitions and delineation criteria to be used for designating undeveloped coastal barriers in specific situations, as required by Section 1321(a) of NFIA. These definitions and criteria are based on the definitions provided by Section 1321(b) of NFIA and are supported by a review of the definitions used previously by the Department of the Interior as well as the Conference Report and the remainder of the legislative history of this provision.

Date for Establishing Development Status. A key issue concerns the point in time when these definitions and delineation criteria will be applied to coastal barrier areas. The Reconcilation Act was silent on this issue. It is clear, however, that a specific date must be chosen to serve this purpose. In the Department's Notice of Intent to Issue a Rule published in the **Federal Register** on December 1, 1981, 46 Fed. Reg. 58346, a March 15, 1982 date was chosen to establish on-the-ground development status for proposed designations. This date will continue to be applicable for final designations. Accordingly, March 15, 1982, is the date utilized to apply these "Definitions and Delineation Criteria" to actual coastal barrier situations to determine the status of development for designation purposes.

While the legislation defines undeveloped coastal barriers, the following points of clarification and amplification will enable accurate and consistent identification and delineation of undeveloped coastal barriers in specific situations. This discussion will also assure that delineation criteria are communicated clearly and in detail.

Definition of Coastal Barriers

In general, the term "coastal barrier" describes a class of low coastal landforms which are typically long and narrow and generally parallel the coast. They are surrounded, or nearly so, by open water, wetlands or other aquatic habitat which separate them from the mainland. Often, substantial portions are sufficiently above normal high tides that dunes and terrestrial vegetation are common. These barriers consist of sand and, less often, other kinds of unconsolidated sediments. The barriers are fronted on the seaward side by a beach and on the mainland side by a wide variety of protected aquatic habitats. These aquatic habitats range from virtually nothing but open water, to scattered discontinuous bands of marsh along the bayside of the barrier, to large marshes dissected by numerous channels, to continuous marshes extending from the barrier to the mainland.

Coastal barriers can, often do, change position in response to storms, sea level rise, currents and numerous other factors. On the Atlantic and Gulf of Mexico coasts, the barriers are generally receding up the incline of the Coastal Plain toward the mainland in response to a progressive rise in sea level. Connections between islands, and between islands and the mainland, are continually being formed and severed during storms. These dynamic resources are at once adapted to and, to some extent, dependent on this natural process for their perpetuation.

There is sufficient variability among coastal barriers, however, that the more detailed description presented in this document must be used in specific situations to identify coastal barriers, or portions thereof, for purposes of this Act.

Distribution of coastal barriers. Coastal barriers are widely distributed along the Atlantic Ocean and the Gulf of Mexico coasts, in locations generally shown in Figure 1. In accordance with the legislative intent of OBRA's sponsors, who were also conferees from the House Banking Committee, only coastal barriers occurring on the Atlantic and Gulf of Mexico coasts are included (*Congressional Record*, July 31, 1981, pages H5792–H5793). While undeveloped coastal barriers may also occur along the West Coast, in Alaska, in Hawaii, in the Great Lakes, and in U.S. Territories, as well as in large embayments on the Atlantic and Gulf of Mexico Coasts (such as Chesapeake and Tampa Bays), these barriers have not been included within the scope of the present definition.

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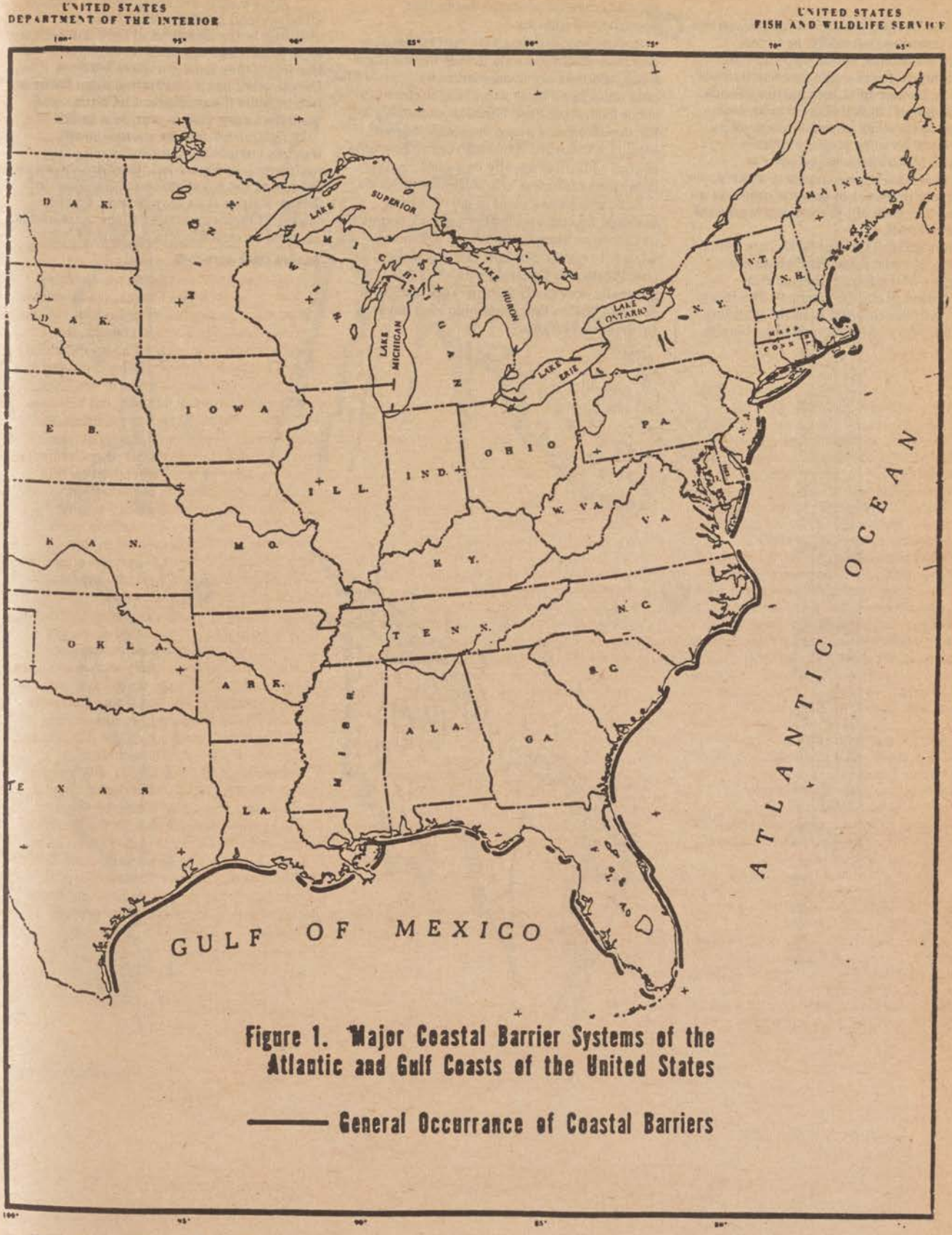


Figure 1. Major Coastal Barrier Systems of the Atlantic and Gulf Coasts of the United States

——— General Occurrance of Coastal Barriers

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Types of coastal barriers. Coastal barriers may be described generally, as in the statutory definition, with respect to their relationship to the mainland as bay barriers, tombolos, barrier spits, and barrier islands. The "mainland" includes the continental landmass as well as large islands such as Long Island, New York, and Martha's Vineyard, Massachusetts, which are surrounded by a large expanse of open water and subject to waves of oceanic origin on all sides (i.e., they do not protect any landward aquatic habitat).

Section 1321(b)(1)(A) of NFIA lists four examples of coastal barriers which are illustrative of the Reconciliation Act classification of coastal barriers. The four coastal barriers referred to in the statutory definition—bay barriers, tombolos, barrier spits and barrier islands—are further described as follows:

A. *Bay barriers* are those coastal barriers that have grown entirely across the mouth of a bay and thus are connected to headlands at both ends (see Figure 2a). These features occur from New York north, most notably in Rhode Island and along the south shore of Martha's Vineyard, Massachusetts. This type of coastal barrier usually encloses aquatic ecosystems referred to locally as salt ponds.

B. *Tombolos* are sand or gravel beach features, i.e., coastal barriers, which connect or tie one or more tombolo (i.e., offshore) islands to each other and to the mainland (see Figure 2b). Coastal barriers of this type generally occur only in New York and New England within the geographic area covered by these definitions.

C. *Barrier spits* are those coastal barriers which extend into open water and are attached to the mainland at only one end (see Figure 2c). They can develop into bay barriers if they grow completely across a bay. On the other hand, bay barriers can become barrier spits if a permanent inlet (i.e., one open for longer than a year) is created.

D. *Barrier islands* are those coastal barriers completely detached from the mainland (see Figure 2d). They are the major feature of the coastline from New York to Texas. Barrier spits may become barrier islands if their connection to the mainland is severed by creation of a permanent inlet.

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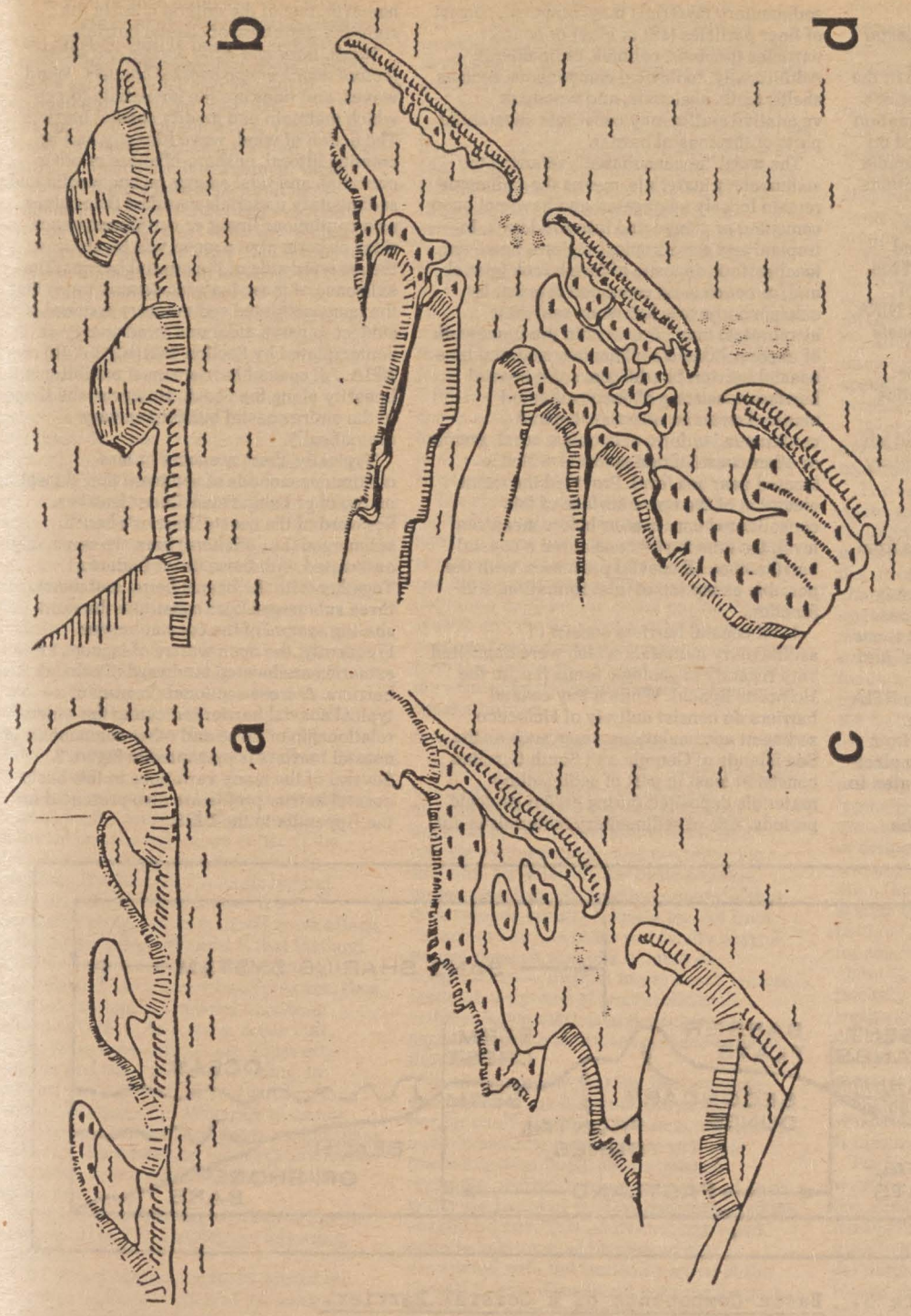


Figure 2. Four Examples of Coastal Barriers along the Atlantic and Gulf Coasts of the United States Listed in the Reconciliation Act: a. Bay Barriers; b. Tombolos; c. Barrier Spits; d. Barrier Islands.

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There is substantial variation in physiographic characteristics among coastal barriers. The nature and range of such variations are described and illustrated in the Appendix to the Department of the Interior's DEIS with regard to the proposed designation of undeveloped coastal barriers released on May 21, 1982. That document or its appendix do not, however, supercede these definitions and delineation criteria.

The four examples of coastal barriers mentioned by the Reconciliation Act and described in this section illustrate the three fundamental characteristics of a coastal barrier cited in Section 1321(b)(1)(A) of NIFA. If a landform on the Atlantic or Gulf coasts exhibits each of these statutory characteristics, it is a coastal barrier for purposes of this Act. These characteristics are that the landform:

- Is a depositional geologic feature which consists of unconsolidated sedimentary materials;
- Is subject to wave, tidal and wind energies, and
- protects landward aquatic habitats from direct wave attack.

Each of these aspects of the definition is discussed further in the following sections.

Composition of coastal barriers. The terms "depositional", "sedimentary materials" and "unconsolidated" used in Sections 1321(b)(1)(A) and 1321(b)(1)(A)(i) of the NFIA are standard geological expressions. A "depositional" feature is one resulting from the accumulation of material in a given place as the result of transport by wind or water. In a coastal barrier the material being transported consists largely of sand. The sedimentary materials may, however, consist of finer particles (silt or clay) or coarser particles (pebbles, cobbles, or boulders). Additionally, biological components, such as shells, teeth, skeletons, and woody or vegetative matter may constitute substantial parts of the coastal barrier.

The word "unconsoliated", referring to sedimentary materials, means the sediments remain loosely aggregated and have not been cemented or compacted into solid rock. In tropical and semi-tropical regions, however, local surface deposits of beach rock (gravel and/or beach sand cemented together by calcium carbonate left when seawater evaporates) may occur within the framework of unconsolidated sedimentary material on a coastal barrier. In addition, some coastal barriers consisting of unconsolidated material occur on an extensive and continuous platform of coquina, coral, granite or other consolidated material which is located near sea level. Provided the mean elevation of the upper surface of this consolidated core is at or below mean sea level, the area is still considered a coastal barrier since all coastal processes, with the possible exception of inlet formation, still function.

Most coastal barriers consist of sedimentary materials which were deposited very recently in geologic terms (i.e., in the Holocene Epoch). While many coastal barriers do consist entirely of Holocene sediment accumulations, some such as the Sea Islands of Georgia and South Carolina consist at least in part of sedimentary materials deposited during earlier geologic periods. Age of sedimentary materials is not, however, one of the criteria cited in the statutory definition of coastal barriers.

Wave, tidal and wind energy and other factors which shape coastal barriers. Wind, waves, and tides are the immediate forces which maintain and modify coastal barriers. The action of wind, wave (directly and by creating littoral, onshore-offshore or other currents), and tidal energy on unconsolidated sedimentary materials manifest themselves as a continuous linear or curvilinear beach ridge or berm above mean tide levels along the seaward side of the coastal barrier. The existence of these features demonstrates that the unconsolidated sedimentary material is subject to wave, tidal and wind energy as contemplated by Section 1321(b)(1)(A)(ii) of NFIA. All coastal barriers must exhibit this linearity along the beach. However, the shape of the entire coastal barrier can vary dramatically.

Typically, there are more or less continuous mounds of sediment (i.e., dunes) on top of or behind such linear features. Seaward of the coastal barrier's beach, submerged (i.e., offshore) bars are commonly associated with these linear features. Together with the beach, berm, and dunes, these submerged bars constitute the sand-sharing system of the coastal barrier. Frequently, the open waters of lagoons or estuaries are located landward of coastal barriers. A cross-sectional diagram of a typical coastal barrier indicating the general relationship of these and other components of coastal barriers is presented in Figure 3. Several of the many variations in this basic coastal barrier profile are also presented in the Appendix to the DEIS.

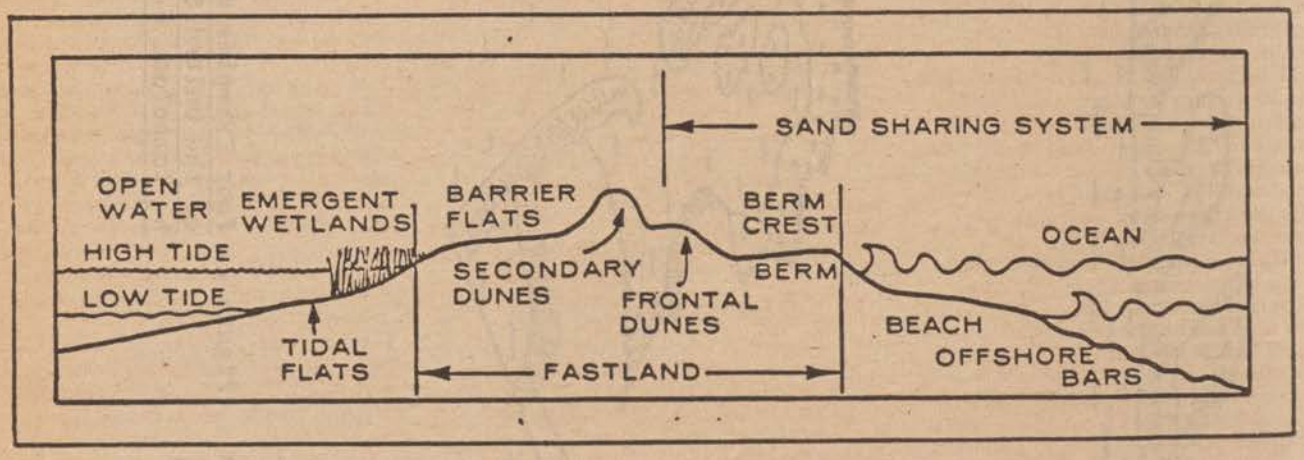


Figure 3. Basic Components of a Coastal Barrier.

Some coastal landforms such as tidal flats by themselves or shorelines where mangroves and other emergent wetland vegetation occur along an open coast are not considered coastal barriers. Although unconsolidated sediments may be present, sufficient wind, wave, and tidal energy is not present to create the linear sedimentary features indicative of coastal barriers. The presence of a linear beach line is readily observable on large scale aerial photography and enables precise delineation of areas subject to sufficient wave, wind and tide energies.

Barriers located within large, closed embayments are generally not considered coastal barriers. However, those located within open embayents or portions thereof, subject to direct impact from waves of oceanic origin such as barriers located in the open embayments typical of the Northeast are considered coastal barriers. Unlike coastal barrier features located in closed embayments such as Chesapeake Bay, coastal barriers in open, often smaller, embayments are primarily the product of sea energies of oceanic origin rather than energies generated internally within the bay itself.

During the last few millenia of geologic time, the rising sea level has been the major determinant controlling the location and configuration of coastal barriers. The rate of sea level rise has been slow enough to allow imigration (rather than submergence) of most coastal barriers. Generally, this migration has

been in a landward direction. The current rate and direction of such migration depends on the type of coastal barrier, its orientation to prevailing winds, the local storm climate, tidal range, the nature and amount of available sediment, the slope and composition of the surface over which the coastal barrier is migrating, as well as other factors. The complex interaction of these forces and factors operating at different intensities and over different time scales is responsible for the great diversity of coastal barriers existing today. This also results in the great heterogeneity of wetland and other aquatic environments protected by or otherwise associated with coastal barriers.

Protection of landward aquatic habitats from direct wave attack. In the presence of sufficient wind, wave, and tidal energy, available unconsolidated sedimentary materials are deposited as linear or curvilinear features in response to basic physical processes. However, under Section 1321(b)(1)(A)(iii) of NFIA, such features are not coastal barriers unless they also protect landward aquatic habitats from direct wave attack. Protection of landward aquatic habitats from direct wave attack is one of the most important functions of coastal barriers. This attribute is also the key feature distinguishing a coastal barrier from a beach situated on a mainland shore. Even though such mainland beaches may consist of unconsolidated sedimentary materials subject to sufficient wind, wave, and tidal energy to create linear feature, they do not protect landward aquatic habitats from direct wave action.

In addition, a coastal barrier is recognized as much by the presence of protected landward aquatic habitat as either of the other two criteria cited in the statutory definition. If a landward aquatic habitat meets the criteria listed below, it is considered protected from direct wave attack by the intervening fastlands. If that fastland consists of unconsolidated sedimentary materials and has a linear beach feature, then the whole system is a coastal barrier as defined in OBRA. As a class, areas that satisfy these three criteria are inherently unstable and susceptible to flooding. In addition, the existence of landward aquatic habitats increases the difficultly of egress from coastal barriers during storm conditions, unlike mainland beaches which do not have such continuous landward aquatic habitats behind them.

Protected landward aquatic habitat exists is recongizable if it satisfies the following conditions:

- It forms a continuous band behind the entire fastland portion of the coastal barrier, whether developed or undeveloped;
- It is protected from direct wave impact, during normal weather as well as during storms, only by the intervening fastland as indicated by the presence of a linear/curvilinear mound of sediment along the seaward side of that fastland; and
- It has flora (e.g., emergent vegetation, seagrasses, etc.) and fauna indicative of a sheltered, low energy environment (as opposed, for instance, to flora and fauna adapted to the high energy environment of the beach).

Associated aquatic habitats. Section 1321(b)(1)(B) of NFIA indicates that all associated aquatic habitats (i.e. those near the fastland * portion of coastal barriers) are considered part of the barrier. In addition, this aspect of the definition is discussed on page 99 of the House Committee report on the Budget Reconciliation bill (House Report 97-158, Volume I). Associated aquatic habitats include adjacent wetlands (including tidal flats and marshes) as well as lagoons, estuaries, coves, bays, and "salt ponds" (i.e. "open waters" landward of or "behind" the fastland portion of the coastal barrier). Inlets and some nearshore waters seaward of the coastal barrier are also included in this term. Associated aquatic habitats, particularly those landward of the barrier, can include fresh or brackish waters as well as waters with nearly the same salinity as the adjacent ocean waters. As with landward aquatic habitats, these associated aquatic habitats need not have evloved as part of the coastal barrier system.

The statutory definition is consistent with the fact that all such associated aquatic habitats along with the fastland component are inseparable parts of a single system, the coastal barrier system. The statutory definition includes the entire coastal barrier system and the area the coastal barrier, or portions thereof, might occupy over the near term (i.e., generally at least 10 years) within the area to be delineated as an undeveloped coastal barrier.

Delineation of Coastal Barriers

Once a coastal barrier has been identified based on the statutory definition as elaborated on in the preceding section, boundaries are delineated based on the criteria outlined in this and the following sections. To reiterate, the basic concept underlying these delineation criteria is that undeveloped coastal barriers extend from "beach to bay". In other words, the coastal barrier must consist of a number of components—a distinct linear beach feature, fastland composed of unconsolidated sedimentary materials and associated aquatic habitats landward and seaward of that fastland.

A. *On the landward side,* the boundary encompasses the fastland core of the coastal barrier itself as well as proximal associated aquatic habitats consisting of wetlands (including tidal flats), shoals, islands, channels, and relatively small areas of open water landward of the fastland portion of the coastal barrier. This additional landward aquatic habitat must be reasonably associated with the fastland portion of the coastal barrier. Consistent with the purpose of OBRA, i.e., to reduce Federal flood insurance subsidies, this landward boundary includes all developable fastland. Arguably, it may not include all aquatic habitat which is ecologically "associated" with the fastland portion of the coastal barrier. This conservative approach for delineating landward boundaries is based on the observation that the degree of protection afforded (and, therefore, the degree of "association" with) landward aquatic habitat diminishes rapidly with distance behind the fastland portion of the barrier.

In general, the landward boundary of coastal barriers follows some natural or cultural feature within the aquatic system behind the coastal barrier. To facilitate delineation and avoid confusion, such features should be recognizable on available maps or aerial photographs as well as on the ground.

Three basic types of aquatic environments, or combinations thereof, occur landward of coastal barriers. Each requires a somewhat different application of the general "landward boundary delineation" rule. These three types of aquatic environments and the specific applications of the "landward boundary delineation" rule are as follows:

(1) *A large expanse of open water exists between the coastal barrier and the mainland.*

The landward boundary is drawn in the open water landward of any wetlands, including tidal flats, indicated on the latest available maps or aerial photographs. If a discernible natural channel, a man-made channel, or a political boundary exists in the open water behind, in close proximity to, and more or less parallel with the coastal barrier, such features may be used to delineate its landward boundary. Generally, if more than one of these features exists, the one closest to the fastland portion of the coastal barrier is used.

Salt ponds as well as coves and other partially enclosed bodies of open water, typically found northward from New York, are considered as special cases for purposes of delineating landward boundaries in open water. For salt ponds without a permanent inlet, the existence and nature of the aquatic system is dependent on and controlled by the fastland portion of the coastal barrier. Hence, for small salt ponds (i.e., those less than about 50 acres), the entire aquatic system (including open water and associated wetlands) is considered, ecologically and geologically, an integral part of the coastal barrier. The line where the aquatic system meets the upland forms the boundary of the unit. The basis for delineating boundaries where bay barriers or spits join the mainland is discussed later in Item D.

For larger salt ponds, the influence of water washing across and temporary breaching of (i.e., creation of a temporary inlet through) the fastland portion of the coastal barrier is usually a less significant factor in defining the nature of the salt pond aquatic system. Hence, the landward boundary of the coastal barrier is drawn as a straight line or along discernible channels through the open water behind the fastland portion of the coastal barrier and across any contiguous wetlands ajoining the points where the coastal barrier feature joins the adjacent headlands.

For coves or other partially enclosed bodies of water with permanent inlets or openings to offshore water, including bay barriers where a permanent breachway has been created, the boundary runs through the open water behind the fastland portion of the coastal barrier. If present, this boundary should follow discernible channels or

* That portion of a coastal barrier between the mean high tide line on the ocean side and the upper limit of tidal wetland vegetation (or, if such vegetation is not present, the mean high tide line) at the rear of the coastal barrier.

political boundaries closest to the fastland portion of the coastal barrier. In the absence of such features, the boundary is arbitrarily located in the open water behind the fastland portion of the barrier and any contiguous marshes and tidal flats.

Another special case arises where isolated offshore barrier islands, especially those that are not elongated and parallel to the general coastline, occur within a large expanse of open water (i.e., when there are no distinct inlets adjacent to the island). Under these circumstances, the boundary is located in the open water on the three sides nearest the mainland to encompass associated aquatic habitats which typically consist of tidal flats.

(2) *Continuous wetlands with well-defined, continuous natural or man-made channels are present between the coastal barrier and the mainland.*

The landward boundary follows the discernible, continuous channel, either natural or manmade, closest to the fastland portion of the coastal barrier. For natural channels, the landward boundary generally follows the deepest portion of the channel. For man-made channels, the landward boundary of the coastal barrier unit is adjacent to the side of the channel closest to the fastland component of the coastal barrier.

(3) *Continuous wetlands without a well-defined, continuous natural or man-made channel are present between the coastal barrier and the mainland.*

To the extent they are discernible, the landward boundary follows the natural or man-made channels closest to the fastland portion of the coastal barrier as in (2) above. For those portions of the aquatic system where discernible channels do not exist, the landward boundary is a straight line through intervening wetlands connecting the upper ends of the channels that do exist.

A variation of this "continuous wetland" situation occurs in New York and New England where streams entering the sea are often flanked by barrier spits. The embayments behind the barriers tend to be filled with salt marshes and tidal flats except for the main stream channel and, sometimes, tributary channels. In this case, there are no discernible channels through these wetlands that can be used to completely delineate the coastal barrier. Under these circumstances and because such wetlands are inseparably related to the coastal barrier, the landward boundary of small embayments encompasses the entire landward aquatic system (i.e., is the line where the wetland and upland meet). For larger embayments, the boundary follows the natural or man-made channels and/or political boundaries closest to the fastland portion of the barrier spits. Straight lines are used to connect these political boundaries or the ends of the channels with the point where the wetlands join the mainland. This wetland-upland interface is followed to the fastland portion of the barrier spits.

B. *On the ocean (i.e., seaward) side,* the boundary is sufficiently seaward of low water to encompass the entire sand-sharing system of the coastal barrier (see Figure 6, page 10).

C. Where the end of a coastal barrier unit is at an *inlet,* the boundary is drawn through the deepest portion of the existing inlet channel.

D. *At the juncture of certain coastal barriers (i.e., bay barriers, tombolos, and barrier spits) with the mainland,* the boundary approximates with straight lines the juncture of the fastland portion of the coastal barrier and the mainland. This juncture is usually recognized fairly readily on maps and aerial photographs as well as on the ground as a physical change in the topography or the nature of the land surface. In most instances, the composition and texture of the soil also changes at this juncture.

E. Both an unconsolidated *tombolo (i.e., offshore) island(s)* and the tombolo(s) which ties it (them) to the mainalnd or to each other represent a coastal barrier unit.

F. *The exterior or outside edge of boundary lines* drawn on the maps represent the boundary of the unit. Hence, boundaries are drawn immediately adjacent to cultural features (roads, railroads, man-made channels, political boundaries, etc.), not on them.

Definition and Delineation of Undeveloped Coastal Barriers

A coastal barrier, or any portion thereof, is treated as an *undeveloped* coastal barrier in accordance with Section 1321(b)(2) of NFIA upon a determination that the area is not an "otherwise protected" coastal barrier consistent with the definition of that phrase provided later. In addition, each of three key elements discussed in this section—"Any portion thereof * * *", "Few man-made structures * * *", and "These structures and man's activities * * * do not significantly impede * * *"—must be satisfied. For designation purposes, the development status of coastal barriers with respect to these three elements is to be determined as of March 15, 1982. Changes on coastal barriers related to these elements after that date will not affect the determination of whether the coastal barrier is considered developed under present provisions of Section 1321(a) of NFIA.

*"Any portion thereof * * *"* The statutory definition does not require an entire coastal barrier be included. Portions of a coastal barrier are also subject to being designated as undeveloped coastal barriers according to the provisions of the Omnibus Budget Reconciliation Act (OBRA) and its legislative history (House Report 97–158, Volume I, page 100). Previous delineation of undeveloped coastal barriers by the Department of the Interior used a minimum ocean-facing shoreline length of one-quarter (0.25) mile for a portion of the coastal barrier extending from the beach to the aquatic system behind the unit. This minimum shoreline length criterion was specifically mentioned in the legislative history of OBRA (*Congressional Record,* July 31, 1981, page H5793). The one-quarter mile minimum size is reasonable because undeveloped coastal barrier segments smaller than that are likely to be significantly affected by adjacent development and human activities.

In essence, the "any portion thereof" concept is structured around several fundamental ideas. Most basic is the concept that each unit must contain an undeveloped area extending from the beach to the bay or other landward aquatic habitat. That is, the unit must include each of the three elements required by the Reconciliation Act definition of a coastal barrier—it must have a beach area that is subject to wind, wave and tide energies; it must have a fastland portion consisting of unconsolidated sediment; and, these elements must protect a landward aquatic habitat area. Second, the undeveloped portion must, at a minimum, consist of at least a quarter-mile of shoreline. This minimum is established from the break-in-development on the fastland portion of the barrier with two exceptions. Large intrusive development is a basis for moving the break-in-development line away from that adverse influence and phased development projects also effect the starting point for evaluation of "portions thereof". Finally, beginning with the break-in-development, each "portion thereof" must meet the structures and man's activities criteria discussed later in this section.

Under two specified circumstances, undeveloped portions of coastal barriers without the requisite one-quarter mile of ocean-facing shoreline surrounded by ("within") an otherwise protected area are included. Both cases involve situations where the adjacent area would be considered undeveloped if it were not protected from development and adverse human activity. For this special circumstance to apply, there must be an undeveloped portion of the coastal barrier extending from the ocean to the landward aquatic habitat.

In the first case, an undeveloped coastal barrier area with less than one-quarter mile of ocean shoreline or no ocean shoreline is included if the area contains at least 25 acres of undeveloped fastland contiguous with the fastland portion of an otherwise protected portion of the coastal barrier which has the necessary one-quarter mile or more of ocean shoreline. In the second case, an area or areas of undeveloped coastal barrier each containing less than 25 acres of fastland, but surrounded by an otherwise protected portion of the coastal barrier is included if some other portion of that coastal barrier is determined to be undeveloped based on the criteria outlined previously. Figure 4 illustrates both circumstances where the "one-quarter mile" rule may be modified.

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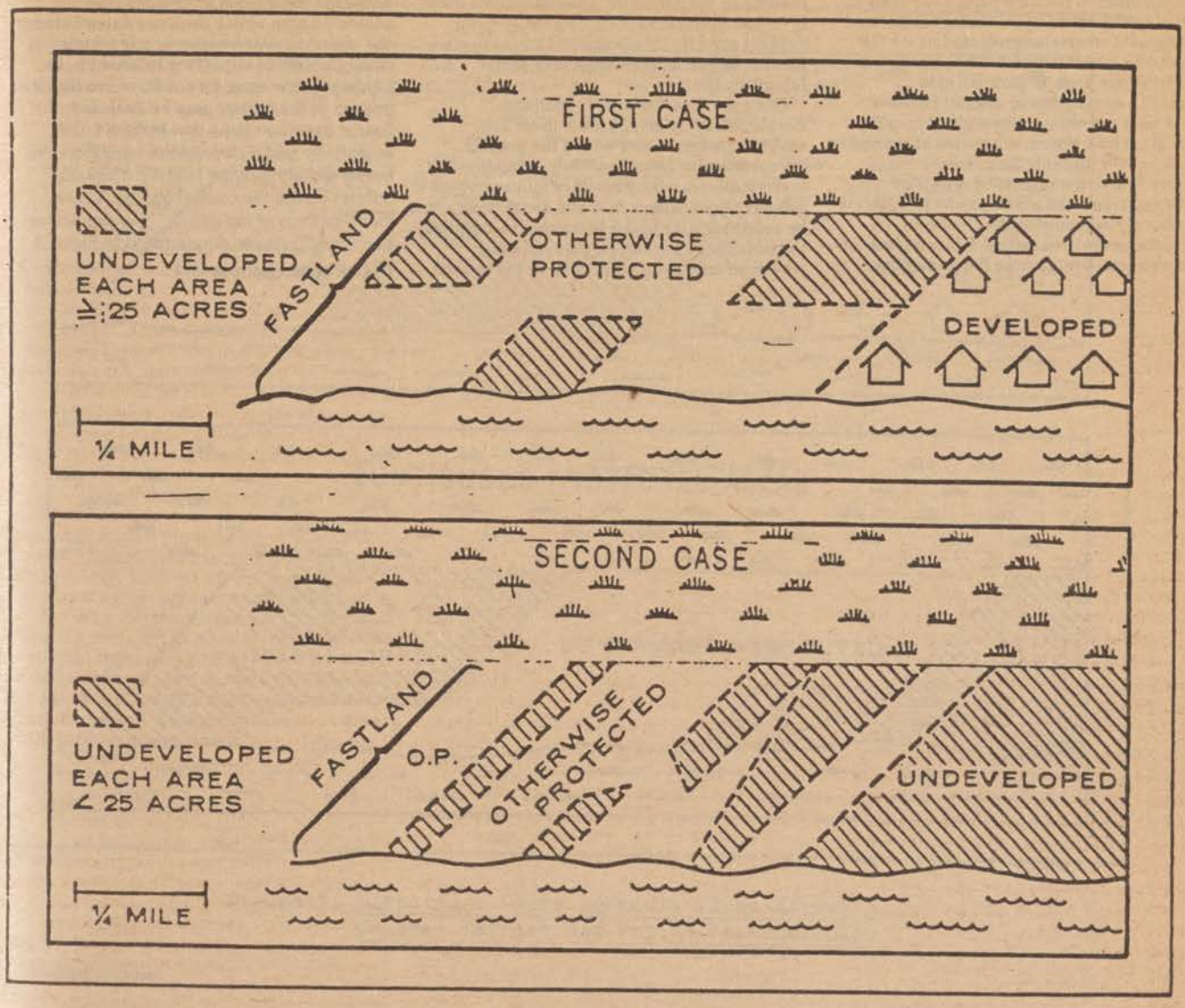


Figure 4. Circumstances Where Areas Without A Quarter Mile of Shoreline May Be Included

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The location of boundary lines between an undeveloped portion of a coastal barrier and a contiguous otherwise protected or developed portion depends on the nature of the contiguous area. In general, side boundaries of portions of coastal barriers should be more or less perpendicular to the ocean shoreline. For an otherwise protected area, however, the side boundary is the property line of the protected area. For developed areas, the side boundary is placed immediately adjacent to the cluster of structures or the area with a full complement of infrastructure indicating the end of the developed portion of the coastal barrier. Such a "break-in-development" is usually quite evident even if a few scattered structures are located on the undeveloped side of the boundary line.

Once the location of the "break-in-development" is established, there are several circumstances where the general "perpendicular boundary" rule is modified. It is desirable that the boundary follow known property lines which, in many cases, may not be perpendicular to the shoreline. In addition, the boundary may not be perpendicular where an undeveloped portion of the coastal barrier is contiguous to an otherwise protected area which does not extend across the entire coastal barrier. In a few instance, small clusters of structures located on the landward side or in the center of the fastland portion of the barrier may be excluded. Again, the result is fastland which is essentially undeveloped extending from the ocean shoreline to the landward aquatic habitat across the coastal barrier. These modifications of the general "perpendicular boundary" rule are diagrammed in Figure 5.

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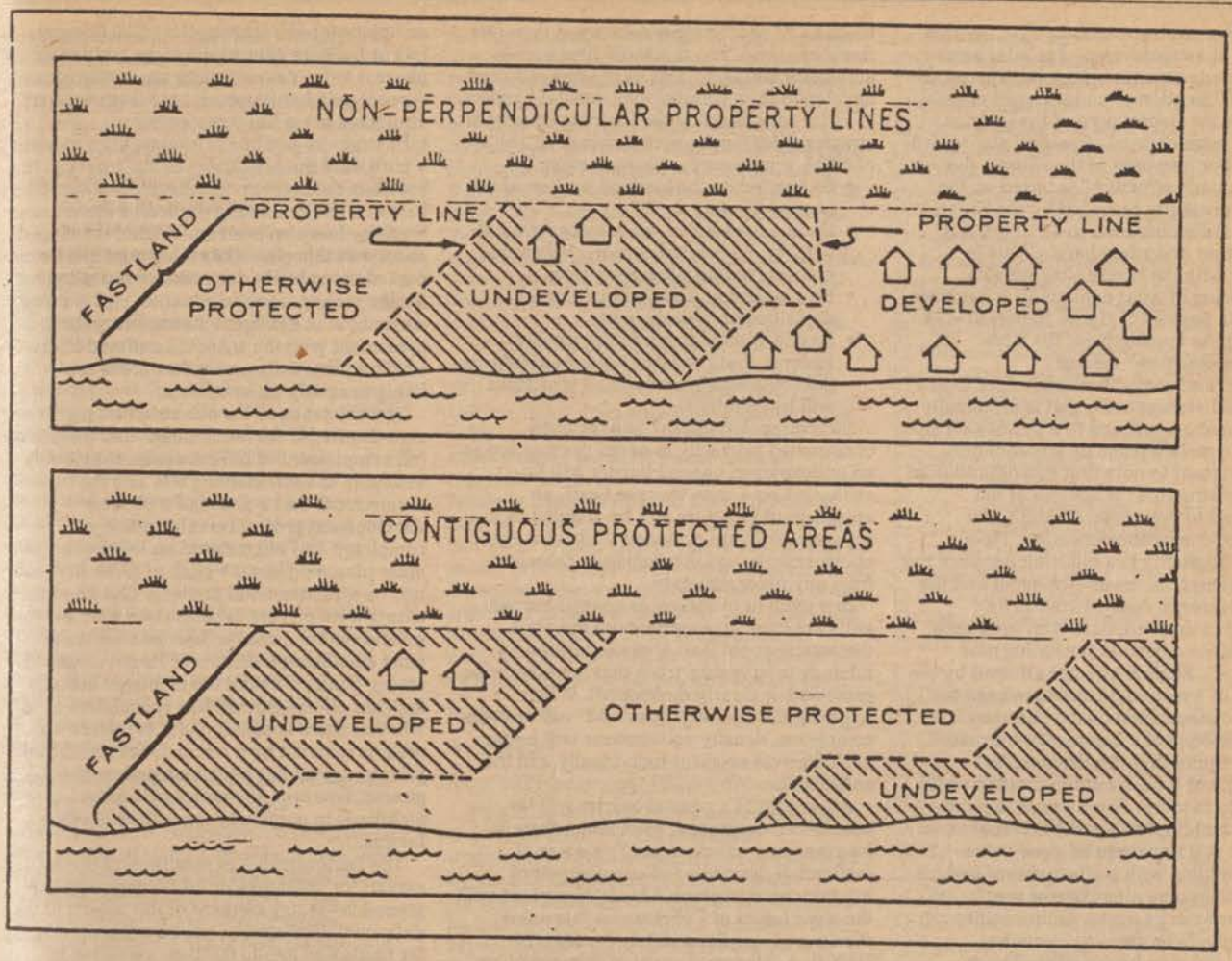


Figure 5. Situations Where Boundary Lines Across A Coastal Barrier May Not Be Perpendicular

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*"Few man-made structures * * *"* Within all or part of an undeveloped coastal barrier, few man-made structures may be present. In previous delineation of undeveloped coastal barriers by the Department of the Interior, structures were defined as walled and roofed buildings. For purposes of the statute, the term "manmade structure" is based on the definition presently provided by the Federal Insurance Administration in 44 CFR § 59.1 and as further described herein. This is consistent with the House Committee's understanding of what constitutes a structure as noted on page 99 of House Report 97–158 (Volume I). As applied here, the term "Manmade structure" means:

A walled and roofed building, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site as will as a mobile home on a foundation.

It is important to note that this definition of "manmade structure" is not one of the criteria used to determine eligibility for Federal flood insurance coverage. Flood insurance eligibility is a question between the property owner, the insurance agent and the Federal Insurance Administration as prescribed in the National Flood Insurance Act of 1968, as amended (including new section 1321). Eligibility is not affected by the definition of a manmade structure used to delineate undeveloped coastal barriers.

This definition of a manmade structure does not require that the structure be completed, but it does require that the walls and roof be in place. For instance, finishing work in a building with walls and roof in place may still remain to be done or an existing building with walls and roof inplace may be undergoing alteration or repair.

Facilities such as docks, groins, utility poles, an pipelines are not counted as structures, but may be considered with regard to infrastructure or in assessing the impacts of man's activities on the coastal barrier (House Report 97–158, Volume I, June 19, 1981, page 100) as will be discussed later.

A density threshold of roughly one structure per five acres of fastland is used for categorizing a coastal barrier as developed. This threshold is cited by the House Committee in their report on the Omnibus Budget Reconciliation Act (House Report 97–158, Volume I, page 100) and was used in previous Department of the Interior delineations. It is based on scientific considerations and empirical observations. At densities greater than this threshold, the number of structures and the associated levels of human activity tend to interfere with the natural processes which build and shape, i.e., stabilize the surface of, coastal barriers. Below the threshold, existing development usually results in little or no interference with natural processes. Of even greater importance, above this density threshold a strong commitment to rebuild after major storm damage exists thereby assuring the area will be stabilized in perpetuity.

There are few coastal barriers which might be considered undeveloped that approach the one structure per five acres of fastland level of development. Most often, those coastal barriers where the density of structures does approach this threshold are presently being developed. Coastal bariers are usually either much more or much less developed than this threshold level. The threshold thus avoids ambiguity and facilitates easy segregation of developed from undeveloped coastal barriers.

To be considered in determining density of structures for purposes of Section 1321(b)(2) of NFIA, a man-made structure must:

- Be located on the fastland portion of the coastal barrier;
- Have a foundation, an enclosed ground area, or, if elevated, a projected ground area exceeding 200 square feet;
- Be a walled and roofed building as described previously, and
- Be constructed in conformance with Federal, State or local legal requirements (i.e., only legally authorized structures will be counted).

Structures that appear to have been constructed primarily to avoid designation as an undeveloped coastal barrier will be evaluated on a case-by-case basis. an appurtenant structure will be counted as a separate structure provided it satisfies the above criteria and is completely detached from any other structure.

In a number of instances coastal barrier units are complexes with more than one discrete segment (i.e., areas separated by inlets or intervening areas that are otherwise protected or clearly developed). When applying the "density threshold" rule to such complexes, density calculations will be for each discrete segment individually, not the entire unit.

All or part of a coastal barrier will be considered developed, even when there is less than one structure per five acres of fastland, if there is a full complement of infrastructure in place. This is consistent with the clear intent of Congress on this point (*Congressional Record*, July 31, 1981, p. H5793). A full complement of infrastructure requires that there be vehicle access (i.e., improved roads or docks) to each lot or building site plus reasonable availability of a water supply, a waste water disposal system, and electrical service to each lot or building site. Ability to use on-site wells and/or septic systems on each later building site in a development, when legally authorized and the normal practice in the vicinity, will constitute water supply and sewage infrastructure since they can be drilled and/or installed concurrently with the construction of the structure. The presence on a coastal barrier of a single road, or even a through highway, plus associated electric transmission and water and sewer lines in this highway corridor does not constitute the necessary full complement of infrastructure necessary to support development. (House Report 97–158, Vol. 1, June 19, 1981, p. 100; and *Congressional Record*, July 31, 1981, p. H5793).

Commitments or legal arrangements necessary for and leading toward construction of either structures or infrastructure will not be considered relevant to the development status of coastal barriers except to the degree they are actually reflected in the existence of structures or infrastructure on the coastal barrier, or portion thereof.

There are situation where initial construction is substantially completed on one phase(s) of a large project (100 or more lots or building sites in the aggregate for all phases) being developed by one entity (or a successor in bankruptcy), but where neither structures nor a full complement of infrastructure has been developed for at least a portion of the remainder of the property. In previous delineation of undeveloped coastal barriers, this remaining portion of the property has also been considered developed so long as this phased development has been part of the publicly documented overall plans for the project from its initiation and is being carried out in a diligent manner in general agreement with the schedule outlined in the original plan. Only a very few areas are likely to satisfy these criteria.

The existence of the one structure per five acre threshold, the requirement that there is a full complement of infrastructure reasonably available to each building site and the requirement that a phase of a phased development project be substantially completed and interrelated on-the-ground to other planned phases—each of these factors rest on a fundamental premise. The existence of intensive private capitilization on-the-ground within a coastal barrier area is the most significant indicator of its development status. Until sufficient development actually appears on-the-ground, it is speculative as to whether there is commitment to restore an area devastated by a storm. Once significant private capital has been invested on-the-ground, however, the area tends to be stabilized in perpetuity regardless of other factors.

The demonstrable expenditure of private capital for structures or infrastucture on-the-ground is the key element of this aspect of the definition. Conversely, public expenditures for roads and public utilities, unrelated to private capitalization on-the-ground, is not a reliable development indicator. General availability of public facilities may make development more feasible, but it does not demonstrate an on-the-ground commitment by landowners to maintain the developed status of a coastal barrier area.

*"These structures and man's activities * * * do not significantly impede * * *"* The statutory definition requires that any structures present on all or part of an area considered an undeveloped coastal barrier and man's activities thereon must not significantly impede geomorphic and ecological processes. Where there is less than one structure per five acres on the fastland portion of the coastal barrier unit, the structures and man's activities on the unit will be determined to significantly impede geomorphic and ecological processes only if they interfere with these natural processes to an extent which impedes or is likely to impede the long-term perpetuation of the coastal barrier system. Notable among man's activities which may impede natural processes are extensive shoreline manipulation and stabilizastion, pervasive canal construction and maintenance, substantial dredging, continuous off-road vehicle use by large numbers of people, and heavy recreational use of the entire beach. However, man's activities alone, unrelated to structures, can not be considered under the

existing provisions of Section 1321(b)(2) of the NFIA (House Report 97–158, Volume 1, June 19, 1981, page 100).

To properly assess the impacts of structure and human activities, the cumulative, often synergistic, impacts of these uses of and activities on each coastal barrier must be evaluated collectively. In some cases, such assessments will require informed, professional judgment. However, most of the barriers being considered for designation are substantially unaffected by such human influences and impacts so that such evaluations will usually be fairly straightforward.

The heart of the man's activities element of the definition is the stabilizing influence of the human presence. Once again, private capitalization becomes a critical factor. While large multiple unit structures containing many residential units are only considered as one structure under these definitions, their impact can be great. That impact is evaluated through the "man's activities" criteria. Similarly, other intensively capitalized projects, such as major agricultural development, would quickly tend to stabilize an area even though there were few actual structures. The key point again is that extensive private capitalization on-the-ground tends to stabilize and, therefore, impede coastal barrier processes.

Definition of Undeveloped Coastal Barriers Held for Conservation Purposes

As provided for in section 1321(b)(3) of the NFIA, a coastal barrier shall be determined to be included within the boundaries of an area established under Federal, State, or local law primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes upon a determination that:

- The area is managed in a manner that will maintain the natural character of a coastal barrier ecosystem, or portion thereof, and
- The provisions of law under which the area is established, and the real property interests in (i.e., ownership of) that area, are adequate to ensure that it will continue to be maintained in that protective status for the requisite primary purpose.

A coastal barrier shall be determined to be held by a qualified organization as defined in section 170(h)(3) of the Internal Revenue Code of 1954, as amended, primarily for wildlife refuge, sanctuary, recreational or natural resource conservation purposes when:

- Such a qualified organization has both the intent and capability to maintain the natural character of a coastal barrier ecosystem, or portion thereof, and
- There is a sufficient real property interest in (i.e., ownership of) the coastal barrier unit to ensure its protection and maintenance.

A "sufficient real property interest" is an interest that would, at a minimum, be adequate to be recognized under the provisions of section 170(f)(3)(B)(iii) of the Internal Revenue Code of 1954, as amended. Such an interest need not automatically restrict the number of structures or the scope of man's activities consistent with the definition of "undeveloped coastal barrier," but it must provide perpetual protection primarily for wildlife refuge, sanctuary, recreational, or natural resource conservation purposes. The requirement of the tax code that the conservation purpose be protected in perpetuity limits the scope of this exception to those situations where the interest held by a qualified organization requires that both the present owner and its successors in interest hold the title or interest in question exclusively for these conservation purposes.

A "qualified organization" is an organization, as defined in section 170(h)(3) of the Internal Revenue Code of 1954, that, has the intent and capability to maintain the natural character of a coastal barrier ecosystem, or portion thereof. Such an organization must be determined to have the requisite commitment and the resources to enforce its perpetual ownership rights in the lands and waters in question to protect this conservation purpose. Previous recognition of an organization as a qualified recipient of an approved conservation contribution pursuant to section 170(f)(3)(b)(iii) of the Internal Revenue Code of 1954, as amended, shall be an indication of this intent and capability.

Appendix B

Order Form

Proposed Undeveloped Coastal Barrier Maps

This form will enable you to obtain copies of some or all of the 188 proposed Undeveloped Coastal Barrier Maps identified by the U.S. Department of the Interior pursuant to Section 341(d)(1) of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35). Each paper print which measures 36 inches by 42 inches will cost $3.25.

Please indicate the number of maps of each unit you want to order in the appropriate box on the following list of maps. If you mark the State box, the number of sets of maps indicated for the entire State will be mailed to you.

- ☐ MAINE (10 maps)
- ☐ A01—Lubec Barriers
- ☐ A02—Sprague Neck Bar
- ☐ A02A—Grassy Point
- ☐ A03—Jasper
- ☐ A03A—Rogue Bluffs Beach
- ☐ A05A—700 Acre Island
- ☐ A06—Cape Elizabeth
- ☐ A07—Scarborough Beach
- ☐ A08—Crescent Surf
- ☐ A09—Seapoint
- ☐ MASSACHUSETTS (41 maps)
- ☐ C00—Clark Pond
- ☐ C01—Wingaersheek
- ☐ C01A—Good Harbor Beach
- ☐ C01B—Brace Cove
- ☐ C02—North Scituate Beach
- ☐ C03—Rivermoor
- ☐ C04—Plymouth Bay
- ☐ C06—Center Hill Complex
- ☐ C08—Scorton Shores
- ☐ C09—Sandy Neck
- ☐ C10—Freemans Pond
- ☐ C11—Namskaket Spits
- ☐ C11A—Boat Meadow
- ☐ C12—Chatham Roads
- ☐ C13—Lewis Bay
- ☐ C14—Squaw Island
- ☐ C15—Centerville
- ☐ C16—Dead Neck
- ☐ C17—Popponesset Spit
- ☐ C18—Waquoit Bay
- ☐ C18A—Falmouth Ponds
- ☐ C19—Black Beach
- ☐ C19A—Buzzards Bay Complex
- ☐ C20—Coatue
- ☐ C21—Sesachacha Pond
- ☐ C22—Cisco Beach
- ☐ C23—Esther Island Complex
- ☐ C24—Tuckernuck Island
- ☐ C25—Muskeget Island
- ☐ C26—Eel Pond Beach
- ☐ C27—Cape Poge
- ☐ C28—South Beach
- ☐ C29—Squibnocket Complex
- ☐ C29A—James Pond
- ☐ C29B—Mink Meadows
- ☐ C31—Elizabeth Islands
- ☐ C31A—West Sconticut Neck
- ☐ C31B—Harbor View
- ☐ C32—Mishaum Point
- ☐ C33—Little Beach
- ☐ C34—Horseneck Beach
- ☐ RHODE ISLAND (11 maps)
- ☐ D01—Little Compton Ponds
- ☐ D02—Fogland Marsh
- ☐ D02B—Prudence Island Complex
- ☐ D02C—West Narragansett Bay Complex
- ☐ D03—Card Ponds
- ☐ D04—Green Hill Beach
- ☐ D05—East Beach
- ☐ D06—Quonochontaug Beach
- ☐ D07—Maschaug Ponds
- ☐ D08—Napatree
- ☐ D09—Block Island
- ☐ CONNECTICUT (11 maps)
- ☐ E01—Wilcox Beach
- ☐ E01A—Ram Island
- ☐ E02—Goshen Cove
- ☐ E03—Jordan Cove
- ☐ E03A—Niantic Bay
- ☐ E03B—Lynde Point
- ☐ E04—Menunketesuck Island
- ☐ E05—Hammonassett
- ☐ E07—Milford Point
- ☐ E08A—Fayerweather Island
- ☐ E09—Norwalk Islands
- ☐ NEW YORK (12 maps)
- ☐ F01—Fishers Island Barriers
- ☐ F02—Eatons Neck
- ☐ F04—Crane Neck
- ☐ F05—Old Field Beach
- ☐ F06—Shelter Island Barriers
- ☐ F08A—Sammys Beach
- ☐ F08B—Acabonack Harbor
- ☐ F09—Gardiners Island Barriers
- ☐ F10—Napeague
- ☐ F11—Mecox
- ☐ F12—Southampton
- ☐ F13—Tiana Beach
- ☐ NEW JERSEY (2 maps)
- ☐ G01—Stone Harbor Point
- ☐ G02—Cape May Complex
- ☐ DELAWARE (2 maps)
- ☐ H00—Broadkill Beach Complex
- ☐ H01—North Bethany Beach
- ☐ VIRGINIA (4 maps)
- ☐ K01—Assawoman Island
- ☐ K03—Cedar Island

- ☐ K04—Little Cobb Island
- ☐ K05—Fishermans Island
- ☐ NORTH CAROLINA (10 maps)
- ☐ L01—Currituck Banks
- ☐ L01A—Duck Research Center
- ☐ L02—Bodie Island
- ☐ L03—Hatteras Island
- ☐ L03A—Shackleford Banks
- ☐ L05—Onslow Beach Complex
- ☐ L06—Topsail
- ☐ L07—Lea Island Complex
- ☐ L08—Wrightsville Beach
- ☐ L09—Masonboro Island
- ☐ SOUTH CAROLINA (12 maps)
- ☐ M01—Waites Island Complex
- ☐ M02—Litchfield Beach
- ☐ M03—Pawleys Inlet
- ☐ M04—Debidue Beach
- ☐ M05—Dewees Island
- ☐ M06—Morris Island Complex
- ☐ M07—Bird Key Complex
- ☐ M08—Captain Sams Inlet
- ☐ M09—Edisto Complex
- ☐ M10—Otter Island
- ☐ M11—Harbor Island
- ☐ M12—St. Phillips Island Complex
- ☐ GEORGIA (7 maps)
- ☐ N01—Little Tybee Island
- ☐ N01A—Wassaw Island
- ☐ N02—St. Catherines Island
- ☐ N03—Little St. Simons Island
- ☐ N04—Sea Island
- ☐ N05—Little Cumberland Island
- ☐ N06—Cumberland
- ☐ FLORIDA (35 maps)
- ☐ P02—Talbot Islands Complex
- ☐ P04—Guana River
- ☐ P04A—Usinas Beach
- ☐ P05—Conch Island
- ☐ P05A—Matanzas River
- ☐ P07—Ormond-by-the Sea
- ☐ P08—Ponce Inlet
- ☐ P09A—Coconut Point
- ☐ P10—Vero Beach
- ☐ P10A—Blue Hole
- ☐ P11—Hutchinson Island
- ☐ P12—Hobe Sound
- ☐ P14A—North Beach
- ☐ P15—Cape Romano
- ☐ P16—Keewaydin Island
- ☐ P17—Lovers Key Complex
- ☐ P17A—Bodwitch Point
- ☐ P18—Sanibel Island Complex
- ☐ P19—North Captiva island
- ☐ P20—Cayo Costa
- ☐ P21—Bocilla Island
- ☐ P21A—Manasota Key
- ☐ P22—Casey Key
- ☐ P23—Long Boat Key
- ☐ P24—The Reefs
- ☐ P24A—Mandalay Point
- ☐ P25—Atsena Otie Key
- ☐ P26—Pepperfish Keys
- ☐ P27A—Ochlockonee Complex
- ☐ P28—Dog Island
- ☐ P29—St. George Island
- ☐ P30—Cape San Blas
- ☐ P31—St. Andrew Complex
- ☐ P31A—Four Mile Village
- ☐ P32—Moreno Point
- ☐ ALABAMA (4 maps)
- ☐ Q00—Perdido Key
- ☐ Q01—Mobile Point
- ☐ Q01A—Pelican Island
- ☐ Q02—Dauphin Islands
- ☐ MISSISSIPPI (4 maps)
- ☐ R01—Round Island
- ☐ R01A—Belle Fontaine Point
- ☐ R02—Deer Island
- ☐ R03—Cat Island
- ☐ LOUISIANA (12 maps)
- ☐ S01—Bastian Bay Complex
- ☐ S01A—Bay Joe Wise Complex
- ☐ S02—Grand Terre Islands
- ☐ S03—Caminada
- ☐ S04—Bay Champagne
- ☐ S05—Timbalier Island
- ☐ S06—Isles Dernieres
- ☐ S07—Point Au Fer
- ☐ S08—Cheniere Au Tigre
- ☐ S09—Rollover
- ☐ S10—Mermentau River Complex
- ☐ S11—Sabine
- ☐ TEXAS (11 maps)
- ☐ T01—Sea Rim
- ☐ T02—High Island
- ☐ T03—Bolivar Peninsula
- ☐ T04—Follets Island
- ☐ T05—Brazos river Complex
- ☐ T06—Sargent Beach
- ☐ T07—Matagorda Peninsula
- ☐ T08—San Jose Island Complex
- ☐ T10—North Padre Island
- ☐ T11—South Padre Island
- ☐ T12—Boca Chica

Complete set of all draft undeveloped coastal barrier maps (188 maps).

Copies of the proposed undeveloped coastal barrier maps are available from the U.S. Geological Survey. Reproduction and handling costs are $3.25 for each 36 in. x 42 in. paper ozalid copy. Requests for copies must be prepaid by check or money order (no cash or stamps) and directed to: Eastern National Cartographic Information Center (E-NCIC), U.S. Geological Survey, 536 National Center, Reston, Virginia 22092, telephone: (703) 860-6336 or FTS 928-6336.

Make checks payable to: The United States Geological Survey. Please indicate where these maps should be sent:

Name _____
Street Address _____
City _____
State _____ Zip Code _____
Organization _____

To be able to contact you in the event there are questions about your order, please include a telephone number where you can be reached weekdays between 8 a.m. and 4 p.m. Est. Telephone: Area Code ( ) Number

[FR Doc. 82-22298 Filed 8-13-82; 8:45 am]

BILLING CODE 4310-10-M

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43 CFR Subtitle A

Prohibition of Flood Insurance for Undeveloped Coastal Barriers

AGENCY: Office of the Secretary, Interior.

ACTION: Update of Notice of intent to issue proposed rule; submission of Report and proposed designations to the Congress.

SUMMARY: This Notice is to highlight upcoming actions of the Secretary of the Interior with regard to his responsibilities concerning undeveloped coastal barriers, as provided by Title III, Part 4 of the Omnibus Budget Reconciliation Act of 1981. These actions will include the submission of proposed designations of undeveloped coastal barriers to the Congress for review and comment; the submission of a Report to the Congress; and, the Notice of a Proposed Rulemaking in the **Federal Register** for a 90-day public review and comment period with regard to the proposed designation of undeveloped coastal barriers.

DATES:

Proposed designations to be provided the Congress for 90-day review on or about August 16, 1982.

Report of findings and conclusions of study of undeveloped coastal barriers to be provided the Congress on or about August 16, 1982.

One recommendation regarding the definition of the term "coastal barrier" as enacted by the Reconciliation Act to be provided the Congress on or about August 16, 1982.

Notice of proposed rulemaking to be published in the **Federal Register** for 90-day public review and comment period on or about August 16, 1982.

Notice of Availability to be published in the **Federal Register** for purchase of aerial photographs from the United States Geological Survey with regard to undeveloped coastal barriers proposed for designation on or about August 16, 1982.

FOR FURTHER INFORMATION CONTACT: Mr. Ric Davidge, Chairman, Coastal Barriers Task Force, U.S. Department of the Interior, Washington, D.C. 20240. (202-343-5347).

SUPPLEMENTARY INFORMATION: On December 1, 1981, the Department of the Interior published a Notice of Intent to issue a proposed rule with regard to the Secretary of the Interior's responsibilities concerning undeveloped coastal barriers, 46 FR 58346. That Notice explained the Department of the Interior's dual responsibility to designate undeveloped coastal barriers and to conduct a study and to submit a report to the Congress concerning the Secretary's proposed designations.

Since that original Notice, the Department has chronicled its coastal barrier efforts through additional Notices in the *Federal Register.* These Notices appear as follows:

Notice of Intent to issue proposed rule, 46 FR 58346, December 1, 1981; Proposed rule; amendment, 46 FR 60022, December 8, 1981; Notice of Availability of Draft Document, 47 FR 2382, January

15, 1982; and Notice of Availability of Draft Environmental Impact Statement and Additional Draft Maps, 47 FR 22231, May 21, 1982.

Consistent with these various Notices, the Department has now reached the point at thich *proposed* designations and *proposed* "Definitions and Delineation Criteria" can be proyided to the Congress and to the public for review and comment prior to final designation. This is being done in two parallel actions. First, as required by the Reconciliation Act, the Department is preparing to transmit its proposed designations and proposed difinitions to the Congress. A report of the findings and conclusions of the Department's study efforts leading to these proposals will also be provided. It is also contemplated that the Secretary will provide the Congress with one recommendation concerning the Reconciliation Act definition of coastal barriers.

Second, the public will also be provided an additional 90-day comment period on the Secretary's proposed designations and proposed definitions. This will be done by a Notice of Proposed Rulemaking. The proposed designations; the proposed "Definitions and Delineation Criteria" utilized to establish the proposed designations; and the procedures proposed to be used to establish final designations will all be available for public review and comment.

The key point is that these designations are only proposed. These disignations are not final. Final designations will not be established by the Secretary of the Interior until after the close of the Congressional and public comment periods. This will not occur before Novemer 13, 1982.

To facilitate the upcoming 90-day public review period a number of additional points should be clarified.

- The public review period on the Secretary's proposed designations will be provided pursuant to a Notice of Proposed Rulemaking to be published in the **Federal Register.** It is contemplated that this release will occur on or about August 16, 1982.
- Information concerning the purchase of special Geological Survey maps depicting each proposed designation will be provided with that Notice.
- It is contemplated that the public will also be provided the opportunity to purchase aerial photographs of the vast majority of the Department's proposed designations. A specific **Federal Register** release is being prepared to explain that process.
- Upon request, the public will also be provided copies of the Secretary of the Interior's report to the Congress concerning his study of undeveloped coastal barriers. Requests should be directed at the address listed under the Further Information heading of this release.
- Coastal Barier Task Force files on each proposed designation are open and available for public inspection. Proposed unit maps, photo atlases and other study information are also available for public review. These files and materials have now been located in Room 3149, at the Department of the Interior, 18th & C Streets, NW., Washington, D.C. Copying facilities will be provided to the degree possible but copies of documents will only be provided pursuant to written request and payment of search and copying costs.
- Consistent with the fact that the Department's sumbmission to the Congress and its Notice of Proposed Rulemaking concern *proposed* designations, *not* final decisions, a number of planning steps remain outstanding. Completion of the Department's final NEPA responsibilities is one example. The relationship between the Secretary's responsibility to designate undeveloped coastal barriers under the Reconciliation Act and the consistency provisions of the Coastal Zone Management Act is also under additional review.

A draft environmental impact statement was provided for public comment on May 21, 1982, and comments were received through July 14, 1982. The proposed designations now being provided to the Congress, and for public review and comment, are similar in scope and overall impact to the preferred alternative provided in that DEIS. Accordingly, it was determined that the existing DEIS was adequate with regard to the proposed designations. A final EIS will be prepared, however, at least 30 days prior to final designation.

The relationship of NEPA to the Department's report to the Congress has also been considered. It has been determined that a final environmental impact statement is not necessary with the submission of this report. This is true because the report does not require or invite Congressional action. It is factual in nature. Unlike Wild and Scenic River or Wilderness studies, which require Congressional action to be effective, the responsibility to designate undeveloped coastal barriers rests with the Secretary of the Interior. Accordingly, it is the act of final designation by the Secretary—not the transmission of proposed designations and a report—that is the major Federal action. The Department is committed to the completion of a FEIS prior to final designation.

In adopting this approach, the Department has considered that one recommendation is also being proposed for transmission to the Congress. Consistent with the Council on Environmental Quality regulations on legislative proposals, the Department has, accordingly, decided to complete its final environmental impact statement as quickly as possible to facilitate Congressional consideration of that recommendation.

The final issue concerns the Coastal Zone Management Act. Recent comments have suggested there may be a need to reconcile the consistency provisions of that Act with the designation of undeveloped coastal barriers. In accord with those comments, the Department has elected to write each participating Coastal Zone State concerning this issue. In essence, this issue has not appeared to be a major concern because of the nature of the action of designating undeveloped coastal barriers. These designations must be within the restrictions imposed by the Reconciliation Act. In addition, final designations will have the result of removing the availability of new Federal flood insurance after October 1, 1983. This result is typically more restrictive than coastal zone management programs. Designation also serves to implement a decision by the Congress to restrict the authority of the Federal flood insurance program and the magnitude of Federal expenditures to be provided for this purpose.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

August 1, 1982.

[FR Doc. 82-22299 Filed 8-13-82; 8:45 am]

BILLING CODE 4310-10-M

federal register

Monday
August 16, 1982

Part IX

Office of Management and Budget

Budget Rescissions and Deferrals; Cumulative Report

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

August 1, 1982.

This report is submitted in fulfillment of the requirements of Section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year with respect to which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of August 1, 1982 of thirty rescission proposals and 251 deferrals contained in the first sixteen messages of FY 1982. These messages were transmitted to the Congress on October 1, 20, 23, and 29, and November 6, and 13, 1981, January 22, February 8, and 19, March 8, April 23, May 18, June 3, and 23, and July 16, and 28, 1982.

Rescissions (Table A and Attachment A)

Twenty-six rescission proposals totaling $1,622.3 million are currently pending before the Congress. Table A summarizes the status of rescissions proposed by the President as of August 1, 1982 while Attachment A shows the history and status of each rescission proposed during FY 1982.

Deferrals (Table B and Attachment B)

As of August 1, 1982, $2,554.9 million in 1982 budget authority was being deferred from obligation and another $8.9 million in 1982 obligations was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1982.

Information from special messages

The special message containing information on the rescissions and the deferrals covered by the cumulative report are printed in the **Federal Registers** of:

Vol. 46, No. 194, FR p. 49793, Wednesday, October 7, 1981
Vol. 46, No. 206, FR p. 52289, Monday, October 26, 1981
Vol. 46, No. 210, FR p. 54259, Friday, October 30, 1981
Vol. 46, No. 212, FR p. 54691, Tuesday, November 3, 1981
Vol. 46, No. 218, FR p. 55905, Thursday, November 12, 1981
Vol. 46, No. 223, FR p. 57019, Thursday, November 19, 1981
Vol. 47, No. 18, FR p. 4021, Wednesday, January 27, 1982
Vol. 47, No. 28, FR p. 6193, Wednesday, February 10, 1982
Vol. 47, No. 37, FR p. 8145, Wednesday, February 24, 1982
Vol. 47, No. 57, FR p. 12751, Wednesday, March 24, 1982
Vol. 47, No. 82, FR p. 18301, Wednesday, April 28, 1982

David A. Stockman,
Director.

BILLING CODE 3110-01-M

Vol. 47, No. 100, FR p. 22483, Monday, May 24, 1982
Vol. 47, No. 110, FR p. 24992, Thursday, June 8, 1982
Vol. 47, No. 127, FR p. 28891, Thursday, July 1, 1982
Vol. 47, No. 141, FR p. 31835, Thursday, July 22, 1982
Vol. 47, No. 149, FR p. 33662, Tuesday, August 22, 1982

TABLE A

STATUS OF 1982 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	$ 7,732.1
Accepted by the Congress	4,098.6
Rejected by the Congress	2,011.2
Pending before the Congress	$ 1,622.3 a.

* *

TABLE B

STATUS OF 1982 DEFERRALS

	Amount (In millions of dollars)*
Deferrals proposed by the President	$ 8,200.0
Routine Executive releases (-$5,350.9 million) and adjustments ($9.0 million) through August 1, 1982.	-5,341.8
Overturned by the Congress	-294.3
Currently before the Congress	$ 2,563.8 b.

a. This amount includes $20.5 million in FY 1983 funds (R82-3).

b. This amount includes $8.9 million in outlays for a Department of the Treasury deferral (D82-23A).

* Detail does not add to total due to rounding.

Attachments

ATTACHMENT A - STATUS OF RESCISSIONS - FISCAL YEAR 1982 AS OF 08/05/82 17:37

AS OF AUGUST 1, 1982 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
FUNDS APPROPRIATED TO THE PRESIDENT								
International Development Assistance								
Functional development assistance program	BA	R82- 4		8,129	2 8 82		8,129*	4 23 82
Sahel development program	BA	R82- 5		2,500	2 8 82		2,500*	4 23 82
	BA	0000						
FUNDS APPROPRIATED TO THE PRESIDENT TOTAL	BA			10,629			10,629	
DEPARTMENT OF AGRICULTURE								
Extension Service								
Extension service	BA	R82- 6		2,000	2 8 82		2,000*	4 26 82
	BA	0000						
DEPARTMENT OF AGRICULTURE TOTAL	BA			2,000			2,000	
DEPARTMENT OF COMMERCE								
National Oceanic and Atmospheric Administration								
Coastal zone management	BA	R82- 7		12,000	2 8 82		12,000*	4 26 82
Coastal energy impact fund	BA	R82- 8		7,000	2 8 82		7,000*	4 26 82
	BA	0000						
DEPARTMENT OF COMMERCE TOTAL	BA			19,000			19,000	
DEPARTMENT OF DEFENSE - MILITARY	BA	0000						
Procurement								
Aircraft procurement, Air Force	BA	R82- 1	65,700		10 23 81		65,700	12 14 81
Missile procurement, Air Force	BA	R82- 2	22,500		10 23 81		22,500	12 14 81
DEPARTMENT OF DEFENSE - MILITARY TOTAL	BA		88,200				88,200	
DEPARTMENT OF EDUCATION								
Office of Elementary and Secondary Education								
Compensatory education for the disadvantaged	BA	R82- 9		411,933	2 8 82		411,933 *	4 26 82
Special programs and populations	BA	R82-10		65,600	2 8 82		65,600 *	4 26 82
Indian education	BA	R82-11		6,255	2 8 82		6,255 *	4 26 82

ATTACHMENT A - STATUS OF RESCISSIONS - FISCAL YEAR 1982 AS OF 08/05/82 17:37

AS OF AUGUST 1, 1982 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
Office of Special Education and Rehab. Services							
Education for the handicapped							
BA	R82-12		258,572	2 8 82		258,572 *	4 26 82
Rehabilitation services and handicapped research							
BA	R82-13		91,171	2 8 82		91,171 *	4 26 82
Office of Vocational and Adult Education							
Vocational and adult education							
BA	R82-14		105,741	2 8 82		105,741 *	4 26 82
Office of Postsecondary Education							
Student financial assistance							
BA	R82-15		141,500	2 8 82		141,500 *	4 26 82
Higher and continuing education							
BA	R82-16		42,739	2 8 82		42,739 *	4 26 82
Office of Educational Research and Improvement							
Libraries							
BA	R82-17		22,110	2 8 82		22,110 *	4 26 82
Departmental management							
Educ. res. & train. overseas (spec. for. curr.)							
BA	R82-18		80	2 8 82		80 *	4 26 82
Office of Bilingual Educ. & Minority Lang. Affairs							
Bilingual education							
BA	R82-19		11,504	2 8 82		11,504 *	4 26 82
DEPARTMENT OF EDUCATION TOTAL BA			1,157,205			1,157,205	
DEPARTMENT OF ENERGY							
Energy Programs							
Fossil energy construction							
BA	R82-30		83,500	7 28 82			
Energy conservation							
BA	R82-20		20,000	2 8 82		20,000*	4 26 82
BA	0000						
DEPARTMENT OF ENERGY TOTAL BA			103,500			20,000	
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT							
Housing Programs							
Subsidized housing programs							
BA	R82-21	9,399,789		2 8 82		5,999,789b	4 26 82
BA	R82-21A	-3,400,000		4 23 82	4,098,640		
Solar Energy and Energy Conservation Bank							
Assistance for solar and conserv improvements							
BA	R82-22	21,850		2 8 82		21,850	4 26 82
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TOTAL BA		6,021,639			4,098,640	6,021,639	

ATTACHMENT A - STATUS OF RESCISSIONS - FISCAL YEAR 1982 AS OF 08/05/82 17:37

AS OF AUGUST 1, 1982 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
DEPARTMENT OF THE INTERIOR							
Geological Survey							
Exploration of natl petroleum reserve-Alaska							
BA	R82-28		16,200	7 16 82			
DEPARTMENT OF LABOR							
Employment and Training Administration							
Temporary employment assistance							
BA	R82-29		47,429	7 16 82			
Mine Safety and Health Administration							
Salaries and expenses							
BA	R82-23		4,095	2 8 82		2,095*	4 26 82
BA	R82-23A		-2,000	2 19 82			
BA	0000						
DEPARTMENT OF LABOR TOTAL BA			49,524			2,095	
DEPARTMENT OF TRANSPORTATION							
Federal Highway Administration							
Highway-related safety grants							
BA	R82-24		9,623	2 8 82		9,623*	4 26 82
BA	0000						
DEPARTMENT OF TRANSPORTATION TOTAL BA			9,623			9,623	
OTHER INDEPENDENT AGENCIES							
BA	0000						
Corporation for Public Broadcasting							
Public broadcasting fund							
BA	R82- 3		20,500a	11 6 81			
National Foundation on the Arts and Humanities							
Institute of Museum Services: Program operations							
BA	R82-25		10,877	2 8 82		10,877*	4 26 82
Office of Fed. Insp. for the Alaska Nat. Gas Sys.							
Salaries and expenses							
BA	R82-27		8,000	6 23 82			
Postal Service							
Payment to the Postal Service Fund							
BA	R82-26		215,230	3 18 82			
OTHER INDEPENDENT AGENCIES TOTAL BA			254,607			10,877	
TOTAL BA		6,109,839	1,622,288		4,098,640	7,341,268	

* This item is still under consideration by the Congress, but the amounts were made available upon expiration of the 45-day withholding period.

a. This is a proposal to rescind FY 1983 funds.

b. These funds were made available for obligation upon expiration of the 45-day withholding period. Subsequently, the Congress rescinded $4,098,640 thousand in P.L. 97-216 enacted July 18, 1982.

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982 AS OF 08/05/82 13:58

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 8-1-82
EXECUTIVE OFFICE OF THE PRESIDENT									
White House Office									
Salaries and Expenses	BA	D82- 27	366		10 20 81	-366			
Special Assistance to the President									
Salaries and Expenses	BA	D82- 28	28		10 20 81	-28			
Council of Economic Advisers									
Salaries and Expenses	BA	D82- 86	32		10 23 81	-32			
Council on Envir. Quality & Office of Envir Qual									
Salaries and Expenses	BA	D82- 29	9		10 20 81	-9			
Office of Policy Development									
Salaries and Expenses	BA	D82- 30	45		10 20 81	-45			
National Security Council									
Salaries and Expenses	BA	D82- 31	62		10 20 81	-62			
Office of Administration									
Salaries and expenses	BA	D82- 32	139		10 20 81	-139			
OMB, Office of Fed. Procurement Policy									
Salaries and expenses	BA	D82- 33	24		10 20 81	-24			
Office of Science and Technology Policy									
Salaries and expenses	BA	D82- 34	30		10 20 81	-30			
Office of the U.S Trade Representative									
Salaries and expenses	BA	D82- 35	78		10 20 81	-78			
EXECUTIVE OFFICE OF THE PRESIDENT TOTAL	BA		813			-813			
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs	BA	D82- 1	15,000		10 1 81				
	BA	D82- 1A		a	1 22 82				
	BA	D82- 1B		a	2 8 82				15,000
Disaster Relief									
Disaster relief	BA	D82-158	7,000		10 29 81	-7,000			
	BA	D82-159	138,000		10 29 81	-138,000			
International Security Assistance									
Foreign military credit sales	BA	D82-222	680,000		2 8 82	-680,000			
Economic support fund	BA	D82-219	1,756,980		1 22 82	-1,709,330			47,650
Military assistance	BA	D82-223	129,512		2 8 82	-101,500			28,012
FUNDS APPROPRIATED TO THE PRESIDENT TOTAL	BA		2,726,492			-2,635,830			90,662
DEPARTMENT OF AGRICULTURE									
Office of the Secretary									
Office of the Secretary	BA	D82-160	29		10 29 81	-29			

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982 AS OF 08/05/82 13:58

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 8-1-82
Agricultural Research Service								
Agricultural research service								
BA	D82-161	1,813		10 29 81	-1,813			
Cooperative State Research Service								
Cooperative state research service								
BA	D82-162	2,790		10 29 81	-2,790			
Extension Service								
Extension service								
BA	D82-163	1,990		10 29 81	-1,990			
National Agricultural Library								
National agricultural library								
BA	D82-164	93		10 29 81	-93			
Statistical Reporting Service								
Statistical reporting service								
BA	D82-165	198		10 29 81	-198			
Agricultural Cooperative Service								
Agricultural cooperative service								
BA	D82-166	39		10 29 81	-39			
Office of Internat. Cooperation and Development								
Scientific activities overseas								
BA	D82-167	700		10 29 81	-700			
Rural Electrification Administration								
Rural electr. and telephone revolving fund								
BA	D82-169	49,368b		10 29 81	-49,368			
Foreign Assistance Programs								
Expenses, P.L. 480								
BA	D82- 36	25,696		10 20 81	-25,696			
Agricultural Stabilization & Conservation Service								
Dairy and beekeeper indemnity programs								
BA	D82- 88	28		10 23 81	-28			
Agricultural conservation								
BA	D82- 87	8,600		10 23 81	-8,600			
Emergency conservation program								
BA	D82-168	1,400		10 29 81	-1,400			
Farmers Home Administration								
Salaries and expenses								
BA	D82-171	526		10 29 81	-526			
Rural housing for domestic farm labor								
BA	D82-173	1,750		10 29 81	-1,750			
BA	D82-224	10,728		2 8 82				10,728
Mutual and self-help housing								
BA	D82-174	490		10 29 81	-490			
Rural water and waste disposal								
BA	D82-170	8,680		10 29 81	-8,680			
Rural community fire protection grants								
BA	D82-172	490		10 29 81	-490			
Agricultural credit insurance fund								
BA	D82-175	1,316		10 29 81	-1,316			
Rural development insurance fund								
BA	D82-176	21,000		10 29 81	-21,000			
Soil Conservation Sevice								
Watershed and flood prevention operations								
BA	D82- 89	8,926		10 23 81	-8,926			
BA	D82-244	8,822		6 3 82				8,822
Animal and Plant Health Inspection Service								
Animal and plant health inspection service								
BA	D82- 90	4,125		10 23 81	-4,125			
Buildings and facilities								
BA	D82-177	236		10 29 81	-236			

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1982 AS OF 08/05/82 13:58

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 8-1-82
Agricultural Marketing Service								
Payments to States and possessions								
BA	D82-178	210		10 29 81	-210			
Food and Nutrition Service								
Food program administration								
BA	D82-209	487		11 6 81	-487			
Child nutrition programs								
BA	D82-210	472		11 6 81	-472			
Special supplemental food programs (WIC)								
BA	D82-211	13,831		11 6 81	-13,831			
Forest Service								
State and private forestry								
BA	D82- 92	776		10 23 81	-776			
BA	D82-179	657		10 29 81	-657			
Agricultural research								
BA	D82- 91	1,348		10 23 81	-1,348			
National forest system								
BA	D82- 93	12,516		10 23 81	-12,516			
BA	D82-180	1,059		10 29 81	-1,059			
Construction and land acquisition								
BA	D82- 94	6,693		10 23 81	-6,693			
Timber salvage sales								
BA	D82- 2	6,723		10 1 81				
BA	D82- 2A		561	1 22 82				7,284
Rangeland improvements								
BA	D82- 96	109		10 23 81	-109			
Acquisition of lands to complete land exchanges								
BA	D82- 95	6		10 23 81	-6			
Expenses, brush disposal								
BA	D82- 3	49,349		10 1 81				
BA	D82- 3A		a	4 23 82			-948	48,401
DEPARTMENT OF AGRICULTURE TOTAL BA		254,069	561		-178,447		-948	75,235
DEPARTMENT OF COMMERCE								
General Administration								
Participation in U.S. expositions								
BA	D82- 4	507		10 1 81	-32			475
Bureau of the Census								
Periodic censuses and programs								
BA	D82-225	1,015		2 8 82				
BA	D82-225A		a	5 18 82				1,015
Economic and Statistical Analysis								
Salaries and expenses								
BA	D82- 97	420		10 23 81	-420			
Economic Development Administration								
Economic development assistance programs								
BA	D82- 98	38,855		10 23 81	-38,855			
BA	D82-245	2,800		6 3 82	-2,800			
Minority Business Development Agency								
Minority business development								
BA	D82- 99	857		10 23 81	-857			
BA	D82-226	5,000		2 8 82				
BA	D82-226A		5,000	5 18 82				10,000
United States Travel Service								
Salaries and expenses								
BA	D82-181	287		10 29 81	-287			
National Oceanic and Atmospheric Administration								
Operations, research, and facilities								
BA	D82-100	12,891		10 23 81	-12,891			
Construction								
BA	D82- 5	2,000		10 1 81				
BA	D82- 5A		a	1 22 82				
BA	D82- 58		a	5 18 82				2,000

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AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 8-1-82
National Telecom. and Information Admin.								
Salaries and expenses								
BA	D82-101	277		10 23 81	-277			
DEPARTMENT OF COMMERCE								
TOTAL BA		64,909	5,000		-56,419			13,490
DEPARTMENT OF DEFENSE-MILITARY								
Procurement								
Shipbuilding and conversion, Navy								
BA	D82-227	1,275,000		2 8 82				1,275,000
Military Construction								
Military construction, all services								
BA	D82- 6	38,837		10 1 81				
BA	D82- 6A		14,101	1 22 82				
BA	D82- 6B		714,785	2 8 82	-729,537		43,250	81,436
Family Housing, Defense								
Family housing, Defense								
BA	D82- 7	1,992		10 1 81	-1,992			
DEPARTMENT OF DEFENSE-MILITARY								
TOTAL BA		1,315,829	728,886		-731,529		43,250	1,356,436
DEPARTMENT OF DEFENSE-CIVIL								
Cemeterial Expenses, Army								
Salaries and expenses								
BA	D82- 37	85		10 20 81	-85			
Corps of Engineers								
General investigations								
BA	D82- 38	2,068		10 20 81	-2,068			
Construction, general								
BA	D82- 39	14,284		10 20 81	-14,284			
General expenses								
BA	D82- 40	370		10 20 81	-370			
Special recreation use fees								
BA	D82- 41	59		10 20 81	-59			
Soldiers and Airmen s Home								
Operation and maintenance								
BA	D82- 42	63		10 20 81	-63			
Wildlife Conservation, Military Reservations								
Wildlife conservation, all services								
BA	D82- 8	597		10 1 81	-8		8	
BA	D82- 8A		433	1 22 82	-22			1,008
DEPARTMENT OF DEFENSE-CIVIL								
TOTAL BA		17,526	433		-16,959		8	1,008
DEPARTMENT OF ENERGY								
Energy Programs								
Fossil energy R&D								
BA	D82-105	14,769		10 23 81	-14,769			
BA	D82-236	44,883		3 18 82		-44,883		
Fossil energy construction								
BA	D82- 9	135,000		10 1 81		-135,000		
Gen. science & research-plant & capital								
BA	D82-102	1,682		10 23 81	-1,682			
Energy supply R&D-operating expenses								
BA	D82-103	49,393		10 23 81	-49,393			
BA	D82-228	4,000		2 8 82				4,000
BA	D82-228A		a	3 18 82				
Energy supply R&D-plant and capital equip.								
BA	D82-104	11,949		10 23 81	-11,949			
Energy conservation								
BA	D82-106	14,007		10 23 81	-14,007			
Strategic Petroleum Reserve								
BA	D82- 10	8,000		10 1 81				

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	BA	D82- 10A		52,860	2 8 82	-8,000			52,860
Energy information administration	BA	D82-107	2,042		10 23 81	-2,042			
Economic regulation	BA	D82-108	2,436		10 23 81	-2,436			
Federal Energy Regulatory Commission	BA	D82-109	490		10 23 81	-490			
Geothermal resources development fund	BA	D82-110	18		10 23 81	-18			
	BA	0000							
DEPARTMENT OF ENERGY TOTAL BA			288,669	52,860		-104,786	-179,883		56,860
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Health Services Administration									
Health Services	BA	D82- 11	1,508		10 1 81	-1,508			
Indian health services	BA	D82-212	10,950		11 6 81	-10,950			
Centers for Disease Control									
Preventive Health Services	BA	D82-213	791		11 6 81	-791			
Alcohol, Drug Abuse & Mental Health Administration									
Construction & renovation, St. Elizabeths Hospital	BA	D82- 12	11,500		10 1 81				
	BA	D82- 12A		a	1 22 82				11,500
Office of Assistant Secretary for Health									
Health services management	BA	D82-214	1,142		11 6 81	-1,142			
Special foreign currency program	BA	D82- 13	7,000		10 1 81				
	BA	D82- 13A		a	1 22 82				7,000
Health Care Financing Administration									
Program management	BA	D82-215	420		11 6 81	-420			
Social Security Administration									
Refugee assistance	BA	D82- 43	10,000		10 20 81	-10,000			
Cuban and Haitian entrants, reception & process.	BA	D82- 44	4,900		10 20 81	-4,900			
	BA	D82- 44A		a	1 22 82				
Cuban and Haitian entrants, domestic asst.	BA	D82- 45	37,000		10 20 81				
	BA	D82- 45A		11,398	1 22 82	-48,398			
Limitation on administrative expenses	BA	D82-237	9,600		3 18 82				
	BA	D82-237A		a	5 18 82				9,600
Human Development Services									
Work incentives	BA	D82-216	10,523		11 6 81	-10,523			
DEPARTMENT OF HEALTH AND HUMAN SERVICES TOTAL BA			105,334	11,398		-88,632			28,100
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT									
Housing Programs									
Subsidized housing programs	BA	D82-182	79,218		10 29 81	-79,218			
Payments for operation of low income housing	BA	D82-183	102,452		10 29 81	-102,452			
Housing for the elderly or handicapped	BA	D82-111	14,294		10 23 81	-14,294			

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Solar Energy and Energy Conserv. Bank								
Assist. for solar and conserv. improvements								
BA	D82-184	3,500		10 29 81	-3,500			
Community Planning and Development								
Community development support assistance								
BA	D82-112	61,589		10 23 81	-61,589			
Urban development action grants								
BA	D82-113	8,412		10 23 81	-8,412			
Rehabilitation loan fund								
BA	D82-185	26,959		10 29 81	-26,959			
Neighborhoods, Vol. Assoc. & Consumer Prot.								
Housing counseling assistance								
BA	D82- 46	207		10 20 81	-207			
Policy Development and Research								
Research and technology								
BA	D82- 47	420		10 20 81	-420			
Fair Housing and Equal Opportunity								
Fair housing assistance								
BA	D82- 48	96		10 20 81	-96			
Management and Administration								
Salaries and expenses								
BA	D82-186	3,590		10 29 81	-3,590			
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TOTAL BA		300,737			-300,737			
DEPARTMENT OF THE INTERIOR								
Bureau of Land Management								
Acquisition, construction and maintenance								
BA	D82- 49	121		10 20 81	-121			
Range improvements								
BA	D82-114	237		10 23 81	-237			
Bureau of Reclamation								
Loan program								
BA	D82-115	792		10 23 81	-792			
Construction program								
BA	D82-116	4,603		10 23 81	-4,603			
General investigations								
BA	D82-117	944		10 23 81	-944			
Operations and maintenance								
BA	D82-118	64		10 23 81	-64			
General administrative expenses								
BA	D82-119	353		10 23 81	-353			
Office of Water Research & Technology								
Salaries and expenses								
BA	D82-120	600		10 23 81	-600			
U.S. Fish and Wildlife Service								
Resource management								
BA	D82-121	5,815		10 23 81	-5,815			
Construction and anadromous fish								
BA	D82- 50	392		10 20 81	-392			
BA	D82-246	600		6 3 82				600
Land acquisition								
BA	D82-247	400		6 3 82				400
National Park Service								
Urban park and recreation grants								
BA	D82-125	1,400		10 23 81	-1,400			
BA	D82-238	858		3 18 82				858
Operation of the National Park Service								
BA	D82-122	5,216		10 23 81	-5,216			
John F. Kennedy Center for the Performing Arts								
BA	D82-124	40		10 23 81	-40			

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Construction										
	BA	D82-123	5,207			10 23 81	-5,207			
Land and water conservation fund										
	BA	D82-126	16,256			10 23 81	-16,256			
	BA	D82- 14	30,000			10 1 81				
	BA	D82- 14A			a	2 8 82				30,000
	BA	D82-239	2,821			3 18 82				2,821
Historic preservation fund										
	BA	D82-218	108			11 13 81	-108			
	BA	D82-240	781			3 18 82				781
Geological Survey										
Surveys, investigations and research										
	BA	D82- 51	9,019			10 20 81	-9,019			
Exploration of National Petroleum Res. in Alaska										
	BA	D82- 52	80			10 20 81	-80			
Payments from proceeds, sale of water										
	BA	D82- 15	45			10 1 81				45
Office of Surface Mining Reclam. and Enforcement										
Regulation and technology										
	BA	D82- 53	1,245			10 20 81	-1,245			
Bureau of Mines										
Drainage of anthracite mines										
	BA	D82- 16	991			10 1 81				
	BA	D82- 16A				2 8 82				991
Mines and minerals										
	BA	D82- 54	2,600			10 20 81	-2,600			
Bureau of Indian Affairs										
Operation of Indian programs										
	BA	D82-127	16,607			10 23 81	-16,607			
Construction										
	BA	D82-128	148			10 23 81	-148			
Road construction										
	BA	D82-129	279			10 23 81	-279			
Office of Territorial Affairs										
Administration of territories										
	BA	D82- 55	2,439			10 20 81	-2,439			
Trust territory of the Pacific Islands										
	BA	D82- 56	2,068			10 20 81	-2,068			
Office of the Solicitor and Office of the Secy										
Departmental management										
	BA	D82-130	414			10 23 81	-414			
Construction management										
	BA	D82-251	3,613			6 23 82				3,613
Youth conservation corps										
	BA	D82-131	2,494			10 23 81	-2,494			
DEPARTMENT OF THE INTERIOR										
TOTAL	BA		119,650				-79,541			40,109
DEPARTMENT OF JUSTICE										
General Administration										
Salaries and expenses										
	BA	D82-187	250			10 29 81	-250			
	BA	D82-188	196			10 29 81	-196			
United States Parole Commission										
Salaries and expenses										
	BA	D82-189	60			10 29 81	-60			
Legal Activities										
Salaries and expenses, Antitrust Division										
	BA	D82-190	81			10 29 81	-81			
Salaries and expenses, Foreign Claims Settl.										
	BA	D82-191	12			10 29 81	-12			

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Federal Prison System										
Buildings and facilities										
	BA	D82-192	1,922			10 29 81	-1,922			
	BA	D82- 17	2,700			10 1 81				
	BA	D82- 17A			a	2 8 82				
	BA	D82- 17B			a	5 18 82				2,700
Office of Justice Assist., Res., and Statistics										
Law enforcement assistance										
	BA	D82-193	10,729			10 29 81	-10,729			
DEPARTMENT OF JUSTICE TOTAL	BA		15,950				-13,250			2,700
DEPARTMENT OF LABOR										
Employment and Training Administration										
Employment and training assistance										
	BA	D82-194	407,670			10 29 81	-407,670			
	BA	D82-229	88,543			2 8 82				
	BA	D82-229A		140,544		6 3 82	-159,168		-47,429d	22,490
	BA	D82- 18	49,881			10 1 81	-49,881			
Occupational Safety and Health Admin.										
Salaries and expenses										
	BA	D82-195	8,500			10 29 81	-8,500			
DEPARTMENT OF LABOR TOTAL	BA		554,594	140,544			-625,219		-47,429	22,490
DEPARTMENT OF STATE										
Administration of Foreign Affairs										
Emergencies in dipl. and consular service										
	BA	D82- 58	84			10 20 81	-84			
Acquis., oper. and main. of buildings abroad										
	BA	D82- 57	514			10 20 81	-514			
International Commissions										
Salaries and expenses										
	BA	D82- 59	80			10 20 81	-80			
Construction										
	BA	D82- 60	20			10 20 81	-20			
American sections, internat. commissions										
	BA	D82- 61	25			10 20 81	-25			
Other										
Emergency refugee and migration assistance fund										
	BA	D82- 19	35,043			10 1 81				
	BA	D82- 19A		100		1 22 82	-2,000			33,143
Migration and refugee assistance										
	BA	D82-241	40,000			4 23 82				40,000
	BA	D82-242	10,000			4 23 82				10,000
U.S. bilateral science and technology agreements										
	BA	D82-230	1,000			2 8 82				
	BA	D82-230A		1,000		4 23 82				2,000
DEPARTMENT OF STATE TOTAL	BA		86,766	1,100			-2,723			85,143
DEPARTMENT OF TRANSPORTATION										
Federal Aviation Administration										
Civil supersonic aircraft development termination										
	BA	D82- 20	3,446			10 1 81	-3,400			46
Facilities & equip. (Airport & airway trust fund)										
	BA	D82- 21	185,783			10 1 81				
	BA	D82- 21A		164,730		1 22 82				
	BA	D82- 28B		61,121		7 16 82				411,634
Federal Railroad Administration										
Commuter rail transfer										
	BA	D82-243	37,500			4 23 82				37,500

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Grants to National Railroad Passenger Corp	BA	D82-217	93,400		11 6 81	-12,740	-80,660		
Maritime Administration									
Ship construction	BA	D82-231	10,000		2 8 82				10,000
Research and Special Programs Administration									
Research and special programs	BA	D82-220	1,050		1 22 82				1,050
DEPARTMENT OF TRANSPORTATION TOTAL	BA		331,179	225,851		-16,140	-80,660		460,230
DEPARTMENT OF THE TREASURY									
Office of the Secretary									
International affairs	BA	D82-196	109		10 29 81	-109			
Office of Revenue Sharing									
Salaries and expenses	BA	D82-197	26		10 29 81	-26			
State and local government fiscal assistance fund	BA	D82- 22	109,738		10 1 81	-6,939		3,467	106,266
	O	D82- 23	6,287		10 1 81				
	O	D82- 23A		14,635	3 18 82	-22,776		10,754	8,900
Federal Law Enforcement Training Center									
Construction	BA	D82- 24	4,200		10 1 81				4,200
Salaries and expenses	BA	D82-198	240		10 29 81	-240			
Bureau of Government Financial Operations									
New York City loan guarantee program	BA	D82-199	16		10 29 81	-16			
Chrysler Corporation loan guarantee program	BA	D82-200	23		10 29 81	-23			
Bureau of Alcohol, Tobacco and Firearms									
Salaries and expenses	BA	D82-201	1,039		10 29 81	-1,039			
Bureau of the Mint									
Expansion and improvements	BA	D82-132	70c		10 23 81			-70	
Internal Revenue Service									
Payment where energy credit exceeds liab for tax	BA	D82-202	8		10 29 81	-8			
DEPARTMENT OF THE TREASURY TOTAL	BA		115,469			-8,400		3,397	110,466
TOTAL	O		6,287	14,635		-22,776		10,754	8,900
ENVIRONMENTAL PROTECTION AGENCY									
Research and development	BA	D82-133	1,889		10 23 81	-1,889			
Abatement, control and compliance	BA	D82-134	8,062		10 23 81	-8,062			
Buildings and facilities	BA	D82-135	69		10 23 81	-69			
Hazardous substance response trust fund	BA	D82-136	3,360		10 23 81	-3,360			
	BA	0000							
ENVIRONMENTAL PROTECTION AGENCY TOTAL	BA		13,380			-13,380			

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NATIONAL AERONAUTICS & SPACE ADMINISTRATION								
Construction of facilities								
BA	D82-137	2,800		10 23 81	-2,800			
BA	0000							
NATIONAL AERONAUTICS & SPACE ADMINISTRATION TOTAL BA		2,800			-2,800			
VETERANS ADMINISTRATION								
Medical and prosthetic research								
BA	D82-138	2,583		10 23 81	-2,583			
Medical admin. and misc. operating expenses								
BA	D82-139	921		10 23 81	-921			
Construction, major projects								
BA	D82-140	91,300		10 23 81		-33,800		57,500
BA	D82-141	7,877		10 23 81	-7,877			
Construction, minor projects								
BA	D82-142	907		10 23 81	-907			
BA	0000							
VETERANS ADMINISTRATION TOTAL BA		103,588			-12,288	-33,800		57,500
OTHER INDEPENDENT AGENCIES								
ACTION								
Operating expenses, domestic programs								
BA	D82- 62	2,896		10 20 81	-2,896			
Administrative Conference of the U. S.								
Salaries and expenses								
BA	D82-143	16		10 23 81	-16			
Advisory Committee on Federal Pay								
Salaries and expenses								
BA	D82-144	4		10 23 81	-4			
Arms Control and Disarmament Agency								
Arms control and disarmament agency								
BA	D82- 63	282		10 20 81	-282			
Board for International Broadcasting								
Salaries and expenses								
BA	D82- 64	252		10 20 81	-252			
Grants and expenses								
BA	D82-248	915		6 3 82				915
Comm. for the Purchase From the Blind								
Salaries and expenses								
BA	D82- 65	10		10 20 81	-10			
District of Columbia								
Loans for capital outlay								
BA	D82-232	38,832		2 8 82				38,832
Equal Employment Opportunity Commission								
Salaries and expenses								
BA	D82-145	3,000		10 23 81	-3,000			
Federal Emergency Management Agency								
State and local assistance								
BA	D82-205	1,814		10 29 81	-1,814			
National flood insurance fund								
BA	D82-203	7,140		10 29 81	-7,140			
BA	D82-204	358,860		10 29 81	-358,860			

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General Services Administration								
Consumer information center								
BA	D82- 68	26		10 20 81	-26			
Nat. Archives & Records Service-operating								
BA	D82- 66	140		10 20 81	-140			
Federal Property Resources Service-operating								
BA	D82- 67	748		10 20 81	-748			
Automated Data & Telecom. Service-operating								
BA	D82-206	120		10 29 81	-120			
Advisory Commission on Intergovt. Relations								
Salaries and expenses								
BA	D82- 69	10		10 20 81	-10			
Delaware River Basin Commission								
Salaries and expenses								
BA	D82- 70	2		10 20 81	-2			
Contribution to the Del. River Basin Comm.								
BA	D82- 71	4		10 20 81	-4			
Interstate Commission on the Potomac River Basin								
Contrib. to Interst. Comm. on Potomac Riv. Basin								
BA	D82- 72	1		10 20 81	-1			
Susquehanna River Basin Commission								
Salaries and expenses								
BA	D82- 73	1		10 20 81	-1			
Contrib. to the Susquehanna River Basin Comm.								
BA	D82- 74	1		10 20 81	-1			
International Communication Agency								
Salaries & expenses								
BA	D82- 75	4,680		10 20 81	-4,680			
Center for cul. and tech. exch. bet. east & west								
BA	D82- 76	125		10 20 81	-125			
Special foreign currency program								
BA	D82-249	700		6 3 82				700
Interstate Commerce Commission								
Salaries and expenses								
BA	D82-146	648		10 23 81	-648			
Japan-U.S. Friendship Commission								
Japan-U.S. Friendship Commission trust fund								
BA	D82- 77	34		10 20 81	-34			
Marine Mammal Commission								
Salaries and expenses								
BA	D82- 78	11		10 20 81	-11			
National Capital Planning Commission								
Salaries and expenses								
BA	D82-207	19		10 29 81	-19			
National Foundation on the Arts & Humanities								
Nat. endowment for the arts: sal. & expenses								
BA	D82-147	11,208		10 23 81	-11,208			
Nat. endowment for the human.: sal. and expenses								
BA	D82-208	5,892		10 29 81	-5,892			
Nat. endowment for the human.: matching grants								
BA	D82-148	2,628		10 23 81	-2,628			
National Mediation Board								
Salaries and expenses								
BA	D82- 79	58		10 20 81	-58			
National Science Foundation								
Research and related activities								
BA	D82- 80	19,924		10 20 81	-19,924			
Scientific activities overseas								
BA	D82- 81	59		10 20 81	-59			
Science and engineering educ. activities								
BA	D82- 82	2,623		10 20 81	-2,623			

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Neighborhood Reinvestment Corporation										
Payment to Neighborhood Reinvest. Corp.	BA	D82- 83	181			10 20 81	-181			
Pennsylvania Avenue Development Corporation										
Salaries and expenses	BA	D82-149	15			10 23 81	-15			
Public development	BA	D82-150	239			10 23 81	-239			
Land acquisition and development fund	BA	D82-151	42			10 23 81	-42			
	BA	D82- 25	30,896			10 1 81	-10,000			
	BA	D82- 25A			a	2 8 82				20,896
Railroad Retirement Board										
Milwaukee railroad restructuring, administration	BA	D82-250	240			6 3 82				240
Selective Service System										
Salaries and expenses	BA	D82- 84	192			10 20 81	-192			
Small Business Administration										
Salaries and expenses	BA	D82-152	3,137			10 23 81	-3,137			
Business loan and investment fund	BA	D82-233	2,500			2 8 82				
	BA	D82-233A		2,500		5 18 82				5,000
Surety bond guarantees revolving fund	BA	D82-154	373			10 23 81	-373			
	BA	D82-234	3,000			2 8 82				
	BA	D82-234A			a	6 3 82				3,000
Lease guarantees revolving fund	BA	D82-153	67			10 23 81	-67			
Smithsonian Institution										
Museum programs and related research	BA	D82-155	231			10 23 81	-231			
Restoration and renovation of buildings	BA	D82-156	145			10 23 81	-145			
Motor Carrier Ratemaking Study Commission										
Salaries and Expenses	BA	D82- 26	150			10 1 81				150
Pres. Com. for the Study of Ethical Probs. in Med.										
Salaries and expenses	BA	D82-221	262			1 22 82				262
Tennessee Valley Authority										
Tennessee Valley Authority fund	BA	D82-157	2,321			10 23 81	-2,321			
United States Railway Association										
Payments for purchase of Conrail securities	BA	D82-235	84,500			2 8 82				84,500
Water Resources Council										
Water resources planning	BA	D82- 85	42			10 20 81	-42			
OTHER INDEPENDENT AGENCIES TOTAL BA			592,216	2,500			-440,221			154,495
TOTAL BA			7,009,970	1,169,133			-5,328,114	-294,343	-1,722	2,554,924
TOTAL O			6,287	14,635			-22,776		10,754	8,900

a. This report was transmitted solely to reflect technical adjustments to the previous report.

b. Off-budget.

c. This deferral was reported in error. Funds for this budget account were not withheld.

d. This amount is now proposed for rescission.

END OF REPORT

[FR Doc. 82-22236 Filed 8-13-82; 8:45 am]
BILLING CODE 3110-01-C

federal register

Monday
August 16, 1982

Part X

Department of Transportation

Coast Guard

Casualty Reporting Requirements

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 146

[CGD 82-023a]

Casualty Reporting Requirements

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: This rule amends those sections of the regulations that relate to the written reporting requirements for marine casualties, injuries and loss of life on Outer Continental Shelf (OCS) facilities, vessels and other units engaged in OCS activities. These changes specifically provide for the use of a single new casualty reporting form which will replace the presently used Forms CG–2692 and 924E. Under present requirements both forms must be submitted for certain types of casualties. The new form also will provide certain information necessary for the evaluation and analysis of safety issues and trends that is not presently available. In addition, these changes eliminate the present requirement to report casualties in person. The effect of these changes will be to reduce the paperwork burden on the public and improve the Coast Guard's analysis of accidents and casualties.

DATES: This interim rule becomes effective August 16, 1982. Comments on this rule and form must be received on or before January 1, 1983. Any necessary changes made to the form will be published in the final rule.

ADDRESS: Comments should be submitted to: Commandant (G–CMC/24), U.S. Coast Guard Headquarters, 2100 2nd St., SW., Washington, DC 20593. Comments received may also be inspected at Room 4402 between 7:30 A.M. and 5:30 P.M. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: LCDR T. E. Hart, Office of Merchant Marine Safety (G–MMI/24), Room 2412, U.S. Coast Guard Headquarters, 2100 2nd St., SW., Washington, DC 20593, Phone: 202–426–6251, between the hours of 7:00 A.M. and 3:30 P.M., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The Coast Guard has determined under the provisions of 5 U.S.C. 553(b)(B) that a notice of proposed rulemaking was unnecessary and contrary to the public interest for the following reasons. The Coast Guard feels that in order for the public to provide meaningful comments on the new form, a period of actual usage would be highly beneficial. The new form includes many suggestions received informally over the past several years. It is considered timely and most practical to implement this form and give the public the opportunity to use it and offer comments and suggestions rather than publishing a hypothetical version which would not get a trial period of use. During this evaluation period, the public will receive the benefit of the reduced reporting requirements. Since the use of a single form reduces the reporting burden, good cause exists for making the interim rule effective less than thirty days after publication.

The present regulations require the person in charge of the vessel or facility to report to the Coast Guard in writing and in person the facts regarding the occurrence of marine casualties, personnel injuries or loss of life. The specific kinds of casualties to be reported are listed in 33 CFR Part 146.30. Similar reporting requirements found in Title 46 CFR are being revised in a regulatory revision [CGD 82–023] in this edition of the **Federal Register.**

The written report must be submitted on Form CG–2692 entitled "Report of Vessel Casualty or Accident" or Form CG–924E entitled "Report of Personal Injury or Loss of Life".

The Coast Guard has developed a new reporting form which combines the present Form CG–2692 and Form CG–924E into a single Form CG–2692 entitled "Report of Marine Accident, Injury or Death". The revised form has been changed to require only information necessary to carry out casualty investigation, statistical gathering and identification of hazardous conditions or situations. This information is used to determine whether new or revised safety initiatives are necessary for the protection of life and property in the maritime environment.

A significant change to the format is in the personnel accident section. Specific information is needed regarding the injured or deceased's employment onboard a vessel or facility, time in the industry and hours on duty. This information will enable the Coast Guard to better evaluate such human factors as experience, training and fatigue, and their effect on the accident rate in various marine occupations.

This revised form is expected to greatly simplify the present reporting requirements. The new form is reproduced following this Preamble.

The Coast Guard will continue to supply accident reporting forms free of charge through its Marine Inspection and Marine Safety Offices. Only an original of the form need be completed thus eliminating the previous requirement for an original and two copies. After the effective date of this Interim final rule, the Coast Guard will provide the new form as supplies become available. The old form will continue to be accepted until 1 January 1983 to allow for convenient transition.

Drafting Information

The principal persons involved in drafting this rule are LCDR T.E. HART, Project Manager, Office of Merchant Marine Safety, and LCDR W.B. SHORT, Project Attorney, Office of the Chief Counsel.

Evaluation and Initial Regulatory Flexibility Analysis

The Coast Guard has evaluated this proposal under Executive Order 12291 and the Department of Transportation's "Policies and Procedures for Simplification, Analysis, and Review of Regulations" [DOT Order 2100.5 dated May 22, 1980], and has determined that it is neither a major nor a significant rulemaking. The proposed regulation has been evaluated under Public Law 96–354 (94 Stat. 1168). The compliance cost to the public required to complete the new form is approximately 50,000 dollars. The combined form is expected to yield a reduction from 2900 annual responses to 2500. This 400 response reduction would yield an average annual savings of $8,000 to the public based on an assumed one hour time for completion of the form at twenty dollars an hour. Since a report is required only when an accident occurs, the impact of this change on individual entities is negligible. Therefore this rule is certified as having no significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting or recordkeeping provisions that are included in this regulation have been submitted for approval to the Office of Management and Budget (OMB). OMB Control Number 2115–0003 has been assigned.

Environmental Statement

The Coast Guard has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, it has been determined that this action is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 146

Coast Guard, Outer Continental Shelf, Marine safety, Vessels, Reporting requirements.

BILLING CODE 4910-14-M

INSTRUCTIONS

FOR COMPLETION OF FORM CG-2692

REPORT OF MARINE ACCIDENT, INJURY OR DEATH

AND FORM CG-2692A, BARGE ADDENDUM

WHEN TO USE THIS FORM

1. This form satisfies the requirements for written reports of accidents found in the Code of Federal Regulations for vessels, Outer Continental Shelf (OCS) facilities, mobile offshore drilling units (MODUs), and diving. The kinds of accidents that must be reported are described in the following paragraphs.

VESSELS

2. A vessel accident must be reported if it involves any vessel (except a publicly owned vessel or a recreational vessel) upon the navigable waters of the U.S., its territories or possessions; or whenever an accident involves a U.S. vessel (except a publicly owned vessel or a recreational vessel) wherever the accident may occur. The accident must also result in one of the following (ref. 46 CFR 4.05-1):

A. All accidental groundings and any intentional grounding which also meets any of the other reporting criteria or creates a hazard to navigation, the environment, or the safety of the vessel;

B. Loss of main propulsion or primary steering, or an associated component or control system, the loss of which causes a reduction of the maneuvering capabilities of the vessel. Loss means that systems, component parts, subsystems, or control systems do not perform the specified or required function;

C. An occurrence materially adversely affecting the vessel's seaworthiness or fitness for service or route including but not limited to fire, flooding, failure or damage to fixed fire extinguishing systems, lifesaving equipment or bilge pumping systems;

D. Loss of life;

E. Injury causing any person to be incapacitated for a period in excess of 72 hours.

F. An occurrence not meeting any of the above criteria but resulting in damage to property in excess of $25,000. This does not include demurrage and similar costs.

MOBILE OFFSHORE DRILLING UNITS

3. MODUs are required by 46 CFR 109.411 to report an accident that results in any of the events listed above for vessels (2-A through 2-F).

BARGES

4. When an accident, as described in Paragraphs (2-A) through (2-F), involves a tug or towboat with barges attached, Form CG-2692 must be filled out for the tug or towboat in control and for each barge causing or sustaining damages. When no towboat is involved (such as a breakaway from a shore mooring, a fire on a moored barge, etc.), enter your company's name in block (1) and complete the form except for blocks (2) through (13). The information for one barge causing or sustaining damage will be entered in blocks (27) through (38). If in either of the above cases more than one barge under the control of your tug, towboat or company causes or sustains damage, form CG-2692A (Barge Addendum) may be used to report all additional barges. The Barge Addendum may never be used alone - Form CG-2692 must always be filled out first.

OCS FACILITIES

5. All OCS facilities (except mobile offshore drilling units) engaged in mineral exploration, development or production activities on the Outer Continental Shelf of the U.S. are required by 33 CFR 146.30 to report accidents resulting in:

(1) Death;

(2) Injury to 5 or more persons in a single incident;

(3) Injury causing any person to be incapacitated for more than 72 hours.

(4) Damage affecting the usefulness of primary lifesaving or firefighting equipment;

(5) Damage to the facility in excess of $25,000 resulting from a collision by a vessel;

(6) Damage to a floating OCS facility in excess of $25,000.

6. Foreign vessels engaged in mineral exploration, development or production on the U. S. Outer Continental Shelf, other than vessels already required to report by paragraphs 2 and 3 above, are required by 46 CFR 146.303 to report casualties that result in:

A. Death;

B. Injury to 5 or more persons in a single incident; or

C. Injury causing 1 person to be incapacitated for more than 72 hours.

DIVING

7. Diving casualties include injury or death that occurs while using underwater breathing apparatus while diving from a vessel or OCS facility.

A. COMMERCIAL DIVING. A dive is considered commercial if it is for commercial purposes from a vessel required to have a Coast Guard certificate of inspection, from an OCS facility or in its related safety zone or in a related activity, at a deepwater port or in its safety zone. Casualties that occur during commercial dives are covered by 46 CFR] 97.486 if they result in:

]. Loss of life;
2. Injury causing incapacitation over 72 hours;
3. Injury requiring hospitalization over 24 hours.

In addition to the information requested on this form, also provide the name of the diving supervisor and, if applicable, a detailed report on gas embolism or decompression sickness as required by 46 CFR] 97.4] 0(a)(9).

Exempt from the commercial catagory are dives for:

]. Marine science research by educational institutions;
2. Research in diving equipment and technology;
3. Search and Rescue controlled by a government agency.

B. ALL OTHER DIVING. Diving accidents not covered by Paragraph (7-A) but involving vessels subject to Paragraph (2), VESSELS, must be reported if they result in death or injury causing incapacitation over 72 hours (Ref. 46 CFR 4.03-] (c)).

HAZARDOUS MATERIALS

8. When an accident involves hazardous materials, public and environmental health and safety require immediate action. As soon as any person in charge of a vessel or facility has knowledge of a release or discharge of oil or a hazardous substance, that person is required to immediately notify the U. S. Department of Transportation's National Response Center (telephone toll-free 800-424-8802). Anyone else knowing of a pollution incident is encouraged to use the toll-free telephone number to report it. If etiologic (disease causing) agents are involved, call the U. S. Public Health Service's Center for Disease Control in Atlanta, Ga. (telephone 404-633-5313). (Ref. 42 USC 9603; 33 CFR 153; 49 CFR 17L15)

HOW TO USE THIS FORM

1. This form may be used to report vessel, facility and personnel accidents, and other loss of life incidents. When complete, deliver or mail this form as soon as possible to the Coast Guard Marine Safety or Marine Inspection Office nearest to the location of the casualty or, if at sea, nearest to the port of first arrival.

2. Please type or print clearly. Fill in all blanks that apply to the kind of accident that has occurred. If a question is not applicable or if the information is not available, the abbreviation "NA" should be entered in that space. For accidents involving barges, towboats or personnel, refer to the special instructions in the following sections.

3. **SPECIAL INSTRUCTIONS**

A. "LOCATION." Block (15) should be filled out as accurately as possible. If at sea, latitude and longitude are best, if known. Otherwise give loran lines, water depth or whatever is most reliably known. In pilot waters, reference to a known landmark or object (buoy, light, etc.) with distance and bearing of the object is appropriate. On rivers or other waterways, the mile marker is a good reference. Always identify the body of water or waterway referred to.

B. "FOR TOWING ONLY." Blocks (23) through (26) must be completed for all accidents involving towboats with tows under their control. Complete blocks (27) through (38) for a barge causing or sustaining damage in an accident. If more than one barge in your tow causes or sustains damage, the "Barge Addendum" (CG-2692A) may be used to provide the information requested in Blocks (27) through (38) for the additional barges. When no towboat is involved, see Paragraph (4) under "When to Use This Form."

C. "PERSONNEL ACCIDENT INFORMATION". Blocks (39) through (56) must be completed for a death or injury. If more than one death or injury occurs in a single incident, complete one CG-2692 and enter the information for one person injured or killed. Attach additional CG-2692's, filling out Blocks (1) and (2) and the "Personnel Accident Information" section (blocks 39 through 56) for each additional person to be reported on.

NOTICE: The information collected on this form is routinely available for public inspection. It is needed by the Coast Guard to carry out its responsibility to investigate marine casualties, to identify hazardous conditions or situations and to conduct statistical analysis. The information is used to determine whether new or revised safety initiatives are necessary for the protection of life or property in the marine environment.

Approved OMB No. 2115-0003

DEPARTMENT OF TRANSPORTATION
U. S. COAST GUARD
CG-2692 (Rev. 6-82)

REPORT OF MARINE ACCIDENT, INJURY OR DEATH

RCS No. G-MMI 2115-0003

UNIT CASE NUMBER

SECTION I. GENERAL INFORMATION

1. Name of Vessel or Facility	2. Official No.	3. Nationality	4. Call Sign	5. USCG Certificate of Inspection Issued at:

6. Type (Towing, Freight, Fish, Drill, etc.)	7. Length	8. Gross Tons	9. Year Built	10. Propulsion (Steam, diesel, gas turbine...)

11. Hull Material (Steel, Wood...)	12. Draft (ft. - in.) FWD.	AFT.	13. If Vessel Classed, By Whom: (ABS, LLOYDS, DNV, BV, etc.)	14. DATE (of occurrence)	15. TIME (Local)

16. Location (See Instruction No.

17. Estimated Loss or Damage TO:

18. Name, Address & Telephone No. of Operating CO.

VESSEL $ _____

CARGO $ _____

OTHER $ _____

19. Name of Master or Person in Charge	USCG License ☐ YES ☐ NO	20. Name of Pilot	USCG License ☐ YES ☐ NO	State License ☐ YES ☐ NO

19a. Street Address (City, State, Zip Code)	19b. Telephone Number	20a. Street Address (City, State, Zip Code)	20b. Telephone Number

21. Casualty Elements Check as many as needed and explain in Block 44.)

NO. OF PERSONS ON BOARD _____

- ☐ DEATH- HOW MANY? _____
- ☐ MISSING- HOW MANY? _____
- ☐ INJURED- HOW MANY? _____
- ☐ HAZARDOUS MATERIAL RELEASED OR INVOLVED (Identify Substance and amount in Block 44.
- ☐ OIL SPILL-ESTIMATE AMOUNT: _____
- ☐ CARGO CONTAINER LOST/DAMAGED
- ☐ COLLISION (Identify other vessel or object in Block 44.)
- ☐ GROUNDING
- ☐ FLOODING; SWAMPING WITHOUT SINKING
- ☐ CAPSIZING (with or without sinking)
- ☐ FOUNDERING OR SINKING
- ☐ HEAVY WEATHER DAMAGE
- ☐ FIRE
- ☐ EXPLOSION
- ☐ COMMERCIAL DIVING CASUALTY
- ☐ ICE DAMAGE
- ☐ DAMAGE TO AIDS TO NAVIGATION
- ☐ STEERING FAILURE
- ☐ MACHINERY OR EQUIPMENT FAILURE
- ☐ ELECTRICAL FAILURE
- ☐ STRUCTURAL FAILURE
- ☐ WAKE DAMAGE
- ☐ FIREFIGHTING OR EMERGENCY EQUIPMENT FAILED OR INADEQUATE (Describe in Block 44.)
- ☐ LIFESAVING EQUIPMENT FAILED OR INADEQUATE (Describe in Block 44.)
- ☐ BLOW OUT (Petroleum exploration/production)
- ☐ OTHER (Specify) _____

22. Conditions

A. Sea or River Conditions (wave height, river stage, etc.)

B. WEATHER
- ☐ CLEAR
- ☐ RAIN
- ☐ SNOW
- ☐ FOG
- ☐ OTHER (Specify) _____

C. TIME
- ☐ DAYLIGHT
- ☐ TWILIGHT
- ☐ NIGHT

D. VISIBILITY
- ☐ GOOD
- ☐ FAIR
- ☐ POOR

E. DISTANCE (miles) (of visibility) _____

F. AIR TEMPERATURE (F) _____

G. WIND SPEED & DIRECTION _____ _____

H. CURRENT SPEED & DIRECTION _____ _____

23. Navigation Information
- ☐ MOORED, DOCKED OR FIXED
- ☐ ANCHORED ☐ UNDERWAY OR DRIFTING

SPEED _____ AND COURSE _____

24. Last Port Where Bound _____

24a. Time and Date of Departure

25. FOR TOWING ONLY (See Instruction No.)	25a. NUMBER OF VESSELS TOWED: Empty	Loaded	Total	25b. TOTAL H.P. OF TOWING UNITS	25c. MAXIMUM SIZE OF TOW WITH TOW-BOAT(S): Length	Width	25d. (Describe in Block 44.)
							☐ PUSHING AHEAD ☐ TOWING ASTERN ☐ TOWING ALONGSIDE ☐ MORE THAN ONE TOW-BOAT ON TOW

SECTION II. FOR BARGE CAUSING OR SUSTAINING DAMAGES

26. Name	26a. Official Number	26b. Type	26c. Length	26d. Gross Tons	26e. USCG Certificate of Inspection Issued at:

26f. Year Built	26g. ☐ SINGLE SKIN ☐ DOUBLE SKIN	26h. Draft FWD	AFT	26i. Operating Company

26j. Damage Amount
DAMAGE TO BARGE $ _____
CARGO $ _____

26k. Describe Damage to Barge

PREVIOUS EDITIONS MAY BE USED

SN 7530-00-FO1-1730

REVERSE OF CG 2692 (REV. 6-82)

SECTION III. PERSONNEL ACCIDENT INFORMATION

27. Person Involved ☐ MALE or ☐ FEMALE ☐ DEAD ☐ MISSING ☐ INJURED

27a. Name (Last, First, Middle Name)

27b. Address (City, State, Zip Code)

27c. Status ☐ CREW ☐ PASSENGER ☐ OTHER (Specify)

28. Birth Date

29. Telephone No. (Area Code)

30. Job Position

31. (Check here if off duty) ☐

32. Employer (If different from Block 18., fill in Name, Address, Telephone No.)

33. Person's Time

	YEAR(S)	MONTH(S)
A. IN THIS INDUSTRY -		
B. WITH THIS COMPANY -		
C. IN PRESENT JOB OR POSITION -		
D. ON PRESENT VESSEL/FACILITY -		
E. HOURS ON DUTY WHEN ACCIDENT OCCURRED -		

34. Industry of Employer (Towing, Fishing, Shipping Crew Supply, Drilling, etc.)

35. Was the Injured Person Incapacitated 72 Hours or More? ☐ YES ☐ NO

36. Date of Death

37. Activity of Person at Time of Accident

38. Specific Location of Accident on Vessel/Facility

39. Type of Accident (Fall, Caught between, etc.)

40. Resulting Injury (Cut, Bruise, Fracture, Burn, etc.)

41. Part of Body Injured

42. Equipment Involved in Accident

43. Specific Object, Part of the Equipment in Block 42., or Substance (Chemical, Solvent, etc.) that directly produced the Injury.

SECTION IV. DESCRIPTION OF CASUALTY

44. Describe How Accident Occurred, Damage and Recommendations for Corrective Safety Measures. (Attach Additional Sheets if necessary.)

45. Witness (Name, Address, Telephone No.)

46. Witness (Name, Address, Telephone No.)

SECTION V. PERSON MAKING THIS REPORT

47. Name (PRINT) (Last, First, Middle)

47a. Signature

47b. Address (City, State, Zip Code)

47c. Title

47d. Telephone No (Area Code)

47e Date

FOR COAST GUARD USE ONLY

REPORTING OFFICE:

APPARENT CAUSE

CASUALTY CODE ABC	INVESTIGATOR (Name)	DATE	APPROVED BY (Name)	DATE

BILLING CODE 4910-14-C

In consideration of the foregoing, Title 33 Code of Federal Regulations is amended as follows.

PART 146—OPERATIONS

1. By revising § 146.35(b) to read as follows:

§ 146.35 Written report of casualty.

* * * * *

(b) The written report required by paragraph (a) of this section may be—

(1) In narrative form;

(2) On Form CG–2692 for casualties resulting in property damage, personnel injury or loss of life.

* * * * *

(Approved by the Office of Management and Budget under OMB Control Number 2115–0003)

Authority: Sec. 4, 67 Stat. 462 (43 U.S.C. 1333) as amended; sec. 22 of sec. 208. Pub. L. 95–372, 92 Stat. 656 (43 U S.C. 1348); 49 CFR 1.46(z).

Dated: August 4, 1982.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 82–22282 Filed 8–13–82; 8:45 am]

BILLING CODE 4910–14–M

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46 CFR Parts 4, 26, 35, 78, 97, 109, 167, 185, 196, and 197

[CGD 82–023]

Casualty Reporting Requirements

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: This rule amends those sections of the regulations that relate to the written reporting requirements for marine casualties, injuries and loss of life. These changes specifically provide for the use of a single new casualty reporting form which will replace the presently used Forms CG–2692 and 924E. Under present requirements both forms must be submitted for certain types of casualties. The new form also will provide certain information necessary for the evaluation and analysis of safety issues and trends that is not presently available. In addition, these changes eliminate the present requirement to report casualties in person. These changes also simplify the reporting of multiple barge casualties as a result of a single incident. The effect of these changes will be to reduce the paperwork burden on the public and improve the Coast Guard's analysis of accidents and casualties.

DATES: This interim rule becomes effective August 16, 1982. Comments on this rule and form must be received on or before January 1, 1983. Any necessary changes made to the form will be published in the final rule.

ADDRESS: Comments should be submitted to: Commandant (G–CMC/24), U.S. Coast Guard Headquarters, 2100 2nd St. SW., Washington, DC 20593. Comments received may also be inspected at room 4402 between the hours of 7 AM and 3:30 PM. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: LCDR T. E. Hart, Office of Merchant Marine Safety (G–MMI/24), Room 2412, U.S. Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC 20593, Phone: 202–426–6251, between the hours of 7 A.M. and 3:30 P.M. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The Coast Guard has determined under the provisions of 5 U.S.C. 553(b)(B) that a notice of proposed rulemaking was unnecessary and contrary to the public interest for the following reasons. The Coast Guard feels that in order for the public to provide meaningful comments on the new form, a period of actual usage would be highly beneficial. The new form includes many suggestions received informally over the past several years. It is considered timely and most practical to implement this form and give the public the opportunity to use it and offer comments and suggestions rather than publishing a hypothetical version which would not get a trial period of use. During the evaluation period, the public will receive the benefit of the reduced reporting requirements. Since the use of a single form reduces the reporting burden, good cause exists for making the interim rule effective less than thirty days after publication.

The present regulations require the person in charge of the vessel to report to the Coast Guard in writing and in person the facts regarding the occurrence of marine casualties, personnel injuries or loss of life.

The specific kinds of casualties to be reported are listed in 46 CFR Part 4.05–1. Similar reporting requirements found in 33 CFR 146 are being revised in a regulatory revision [CGD 82–023a] in this edition of the **Federal Register**. The written report must be submitted on Form CG–2692 entitled "Report of Vessel Casualty or Accident" or Form CG–924E entitled "Report of Personal Injury or Loss of Life".

The Coast Guard has developed a new reporting form which combines the present Form CG–2692 and Form CG–924E into a single Form CG–2692 entitled "Report of Marine Accident, Injury or Death". The revised form has been changed to require only information necessary to carry out casualty investigation, statistical gathering and identification of hazardous conditions or situations. This information is used to determine whether new or revised safety initiatives are necessary for the protection of life and property in the maritime environment.

A significant change to the format is in the personnel accident section. Specific information is needed regarding the injured or deceased's employment onboard a vessel or facility, time in the industry and hours on duty. This information will enable the Coast Guard to better evaluate such human factors as experience, training and fatigue and their effect on the accident rate in various marine occupations.

The Coast Guard has also developed a separate Form CG–2692A entitled "Barge Addendum", which contains reproductions of the barge information section found on the CG–2692. A reduction in reporting burden will occur for incidents when a single casualty results in damage to more than one barge in a tow. Vessel information regarding those additional barges may be entered in the addendum and appended to the CG–2692. This will eliminate the current practice of requiring a fully completed CG–2692 for each barge involved in the casualty. The effect of this rule will reduce the paperwork burden on the public by eliminating the need to repeat identical information on each form.

This revised form is expected to greatly simplify the present reporting requirements. The new form with addendum is reproduced following this preamble.

The Coast Guard will continue to supply accident reporting forms free of charge through its Marine Inspection and Marine Safety Offices. Only an original of the form need be completed thus eliminating the previous requirement for an original and two copies. After the effective date of this Interim final rule, the Coast Guard will provide the new form as supplies become available. The old form will continue to be accepted until 1 January 1983 to allow for convenient transition.

Drafting Information

The principal persons involved in drafting this rule are LCDR T. E. Hart, Project Manager, Office of Merchant Marine Safety, and LCDR W. B. Short, Project Attorney, Office of the Chief Counsel.

EVALUATION AND INITIAL REGULATORY FLEXIBILITY ANALYSIS

The Coast Guard has evaluated this proposal under Executive Order 12291 and the Department of Transportation's "Policies and Procedures for Simplification, Analysis, and Review of Regulations" [DOT Order 2100.5 dated May 22, 1980], and has determined that it is neither a major nor a significant rulemaking. The proposed regulation has been evaluated under Public Law 96–354 (94 Stat. 1168). The compliance cost to the public required to complete the new form is $80,000. The combined form is expected to yield a reduction from 5,000 annual responses to 4,000. This 1,000 response reduction would yield an average annual savings of $20,000 to the public based on an assumed one hour time for completion of the form at twenty dollars an hour. This time includes information gathering efforts. The actual filling in of blanks would take much less than one hour. Since a report is required only when an accident occurs, the impact of this change on individual entities is negligible. Therefore this rule is certified as having no significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the reporting or recordkeeping provisions that are included in this regulation have been submitted for approval to the Office of Management and Budget (OMB). OMB Control Number 2115–0003 has been assigned.

ENVIRONMENTAL STATEMENT

The Coast Guard has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, it has been determined that this action is categorically excluded from further environmental documentation:

BILLING CODE 4910-14-M

INSTRUCTIONS

FOR COMPLETION OF FORM CG-2692

REPORT OF MARINE ACCIDENT, INJURY OR DEATH

AND FORM CG-2692A, BARGE ADDENDUM

WHEN TO USE THIS FORM

1. This form satisfies the requirements for written reports of accidents found in the Code of Federal Regulations for vessels, Outer Continental Shelf (OCS) facilities, mobile offshore drilling units (MODUs), and diving. The kinds of accidents that must be reported are described in the following paragraphs.

VESSELS

2. A vessel accident must be reported if it involves any vessel (except a publicly owned vessel or a recreational vessel) upon the navigable waters of the U.S., its territories or possessions; or whenever an accident involves a U.S. vessel (except a publicly owned vessel or a recreational vessel) wherever the accident may occur. The accident must also result in one of the following (ref. 46 CFR 4.05-1):

A. All accidental groundings and any intentional grounding which also meets any of the other reporting criteria or creates a hazard to navigation, the environment, or the safety of the vessel;

B. Loss of main propulsion or primary steering, or an associated component or control system, the loss of which causes a reduction of the maneuvering capabilities of the vessel. Loss means that systems, component parts, subsystems, or control systems do not perform the specified or required function;

C. An occurrence materially adversely affecting the vessel's seaworthiness or fitness for service or route including but not limited to fire, flooding, failure or damage to fixed fire extinguishing systems, lifesaving equipment or bilge pumping systems;

D. Loss of life;

E. Injury causing any person to be incapacitated for a period in excess of 72 hours.

F. An occurrence not meeting any of the above criteria but resulting in damage to property in excess of $25,000. This does not include demurrage and similar costs.

MOBILE OFFSHORE DRILLING UNITS

3. MODUs are required by 46 CFR 109.411 to report an accident that results in any of the events listed above for vessels (2-A through 2-F).

BARGES

4. When an accident, as described in Paragraphs (2-A) through (2-F), involves a tug or towboat with barges attached, Form CG-2692 must be filled out for the tug or towboat in control and for each barge causing or sustaining damages. When no towboat is involved (such as a breakaway from a shore mooring, a fire on a moored barge, etc.), enter your company's name in block (1) and complete the form except for blocks (2) through (13). The information for one barge causing or sustaining damage will be entered in blocks (27) through (38). If in either of the above cases more than one barge under the control of your tug, towboat or company causes or sustains damage, form CG-2692A (Barge Addendum) may be used to report all additional barges. The Barge Addendum may never be used alone - Form CG-2692 must always be filled out first.

OCS FACILITIES

5. All OCS facilities (except mobile offshore drilling units) engaged in mineral exploration, development or production activities on the Outer Continental Shelf of the U.S. are required by 33 CFR 146.30 to report accidents resulting in:

(1) Death;

(2) Injury to 5 or more persons in a single incident;

(3) Injury causing any person to be incapacitated for more than 72 hours.

(4) Damage affecting the usefulness of primary lifesaving or firefighting equipment;

(5) Damage to the facility in excess of $25,000 resulting from a collision by a vessel;

(6) Damage to a floating OCS facility in excess of $25,000.

6. Foreign vessels engaged in mineral exploration, development or production on the U. S. Outer Continental Shelf, other than vessels already required to report by paragraphs 2 and 3 above, are required by 46 CFR 146.303 to report casualties that result in:

A. Death;

B. Injury to 5 or more persons in a single incident; or

C. Injury causing 1 person to be incapacitated for more than 72 hours.

DIVING

7. Diving casualties include injury or death that occurs while using underwater breathing apparatus while diving from a vessel or OCS facility.

A. COMMERCIAL DIVING. A dive is considered commercial if it is for commercial purposes from a vessel required to have a Coast Guard certificate of inspection, from an OCS facility or in its related safety zone or in a related activity, at a deepwater port or in its safety zone. Casualties that occur during commercial dives are covered by 46 CFR] 97.486 if they result in:

]. Loss of life;
2. Injury causing incapacitation over 72 hours;
3. Injury requiring hospitalization over 24 hours.

In addition to the information requested on this form, also provide the name of the diving supervisor and, if applicable, a detailed report on gas embolism or decompression sickness as required by 46 CFR] 97.4] 0(a)(9).

Exempt from the commercial catagory are dives for:

]. Marine science research by educational institutions;
2. Research in diving equipment and technology;
3. Search and Rescue controlled by a government agency.

B. ALL OTHER DIVING. Diving accidents not covered by Paragraph (7-A) but involving vessels subject to Paragraph (2), VESSELS, must be reported if they result in death or injury causing incapacitation over 72 hours (Ref. 46 CFR 4.03-] (c)).

HAZARDOUS MATERIALS

8. When an accident involves hazardous materials, public and environmental health and safety require immediate action. As soon as any person in charge of a vessel or facility has knowledge of a release or discharge of oil or a hazardous substance, that person is required to immediately notify the U. S. Department of Transportation's National Response Center (telephone toll-free 800-424-8802). Anyone else knowing of a pollution incident is encouraged to use the toll-free telephone number to report it. If etiologic (disease causing) agents are involved, call the U. S. Public Health Service's Center for Disease Control in Atlanta, Ga. (telephone 404-633-5313). (Ref. 42 USC 9603; 33 CFR 153; 49 CFR 17L15)

HOW TO USE THIS FORM

1. This form may be used to report vessel, facility and personnel accidents, and other loss of life incidents. When complete, deliver or mail this form as soon as possible to the Coast Guard Marine Safety or Marine Inspection Office nearest to the location of the casualty or, if at sea, nearest to the port of first arrival.

2. Please type or print clearly. Fill in all blanks that apply to the kind of accident that has occurred. If a question is not applicable or if the information is not available, the abbreviation "NA" should be entered in that space. For accidents involving barges, towboats or personnel, refer to the special instructions in the following sections.

3. **SPECIAL INSTRUCTIONS**

A. **"LOCATION."** Block (15) should be filled out as accurately as possible. If at sea, latitude and longitude are best, if known. Otherwise give loran lines, water depth or whatever is most reliably known. In pilot waters, reference to a known landmark or object (buoy, light, etc.) with distance and bearing of the object is appropriate. On rivers or other waterways, the mile marker is a good reference. Always identify the body of water or waterway referred to.

B. **"FOR TOWING ONLY."** Blocks (23) through (26) must be completed for all accidents involving towboats with tows under their control. Complete blocks (27) through (38) for a barge causing or sustaining damage in an accident. If more than one barge in your tow causes or sustains damage, the "Barge Addendum" (CG-2692A) may be used to provide the information requested in Blocks (27) through (38) for the additional barges. When no towboat is involved, see Paragraph (4) under "When to Use This Form."

C. **"PERSONNEL ACCIDENT INFORMATION".** Blocks (39) through (56) must be completed for a death or injury. If more than one death or injury occurs in a single incident, complete one CG-2692 and enter the information for one person injured or killed. Attach additional CG-2692's, filling out Blocks (1) and (2) and the "Personnel Accident Information" section (blocks 39 through 56) for each additional person to be reported on.

NOTICE: The information collected on this form is routinely available for public inspection. It is needed by the Coast Guard to carry out its responsibility to investigate marine casualties, to identify hazardous conditions or situations and to conduct statistical analysis. The information is used to determine whether new or revised safety initiatives are necessary for the protection of life or property in the marine environment.

Approved OMB No. 2115-0003

DEPARTMENT OF TRANSPORTATION
U. S. COAST GUARD
CG-2692 (Rev. 6-82)

REPORT OF MARINE ACCIDENT, INJURY OR DEATH

RCS No. G-MMI 2115-0003

UNIT CASE NUMBER

SECTION I. GENERAL INFORMATION

1. Name of Vessel or Facility
2. Official No.
3. Nationality
4. Call Sign
5. USCG Certificate of Inspection Issued at:
6. Type (Towing, Freight, Fish, Drill, etc.)
7. Length
8. Gross Tons
9. Year Built
10. Propulsion (Steam, diesel, gas turbine...)
11. Hull Material (Steel, Wood...)
12. Draft (ft. in.) FWD. AFT.
13. If Vessel Classed, By Whom: (ABS, LLOYDS, DNV, BV, etc.)
14. DATE (of occurrence)
15. TIME (Local)
16. Location (See Instruction No.
17. Estimated Loss or Damage TO:
VESSEL $
CARGO $
OTHER $
18. Name, Address & Telephone No. of Operating CO.
19. Name of Master or Person in Charge
USCG License ☐ YES ☐ NO
20. Name of Pilot
USCG License ☐ YES ☐ NO
State License ☐ YES ☐ NO
19a. Street Address (City, State, Zip Code)
19b. Telephone Number
20a. Street Address (City, State, Zip Code)
20b. Telephone Number

21. Casualty Elements Check as many as needed and explain in Block 44.)

NO OF PERSONS ON BOARD _____
☐ DEATH- HOW MANY? _____
☐ MISSING- HOW MANY? _____
☐ INJURED- HOW MANY? _____
☐ HAZARDOUS MATERIAL RELEASED OR INVOLVED (Identify Substance and amount in Block 44.
☐ OIL SPILL-ESTIMATE AMOUNT: _____
☐ CARGO CONTAINER LOST/DAMAGED
☐ COLLISION (Identify other vessel or object in Block 44.)
☐ GROUNDING

☐ FLOODING; SWAMPING WITHOUT SINKING
☐ CAPSIZING (with or without sinking)
☐ FOUNDERING OR SINKING
☐ HEAVY WEATHER DAMAGE
☐ FIRE
☐ EXPLOSION
☐ COMMERCIAL DIVING CASUALTY
☐ ICE DAMAGE
☐ DAMAGE TO AIDS TO NAVIGATION
☐ STEERING FAILURE
☐ MACHINERY OR EQUIPMENT FAILURE
☐ ELECTRICAL FAILURE
☐ STRUCTURAL FAILURE

☐ WAKE DAMAGE
☐ FIREFIGHTING OR EMERGENCY EQUIPMENT FAILED OR INADEQUATE (Describe in Block 44.)
☐ LIFESAVING EQUIPMENT FAILED OR INADEQUATE (Describe in Block 44.)
☐ BLOW OUT (Petroleum exploration/production)
☐ OTHER (Specify)

22. Conditions

A. Sea or River Conditions (wave height, river stage, etc.)

B. WEATHER
☐ CLEAR
☐ RAIN
☐ SNOW
☐ FOG
☐ OTHER (Specify)

C. TIME
☐ DAYLIGHT
☐ TWILIGHT
☐ NIGHT

D. VISIBILITY
☐ GOOD
☐ FAIR
☐ POOR

E. DISTANCE (miles) (of visibility)
F. AIR TEMPERATURE (F)
G. WIND SPEED & DIRECTION
H. CURRENT SPEED & DIRECTION

23. Navigation Information
☐ MOORED, DOCKED OR FIXED
☐ ANCHORED ☐ UNDERWAY OR DRIFTING
SPEED AND COURSE

24. Last Port Where Bound
24a. Time and Date of Departure

25. FOR TtowING ONLY (See Instruction No.)
25a. NUMBER OF VESSELS TOWED — Empty | Loaded | Total
25b. TOTAL H.P. OF TOWING UNITS
25c. MAXIMUM SIZE OF TOW WITH TOW-BOAT(S) — Length | Width
25d. (Describe in Block 44.)
☐ PUSHING AHEAD
☐ TOWING ASTERN
☐ TOWING ALONGSIDE
☐ MORE THAN ONE TOW-BOAT ON TOW

SECTION II. FOR BARGE CAUSING OR SUSTAINING DAMAGES

26. Name
26a. Official Number
26b. Type
26c. Length
26d. Gross Tons
26e. USCG Certificate of Inspection Issued at:
26f. Year Built
26g. ☐ SINGLE SKIN ☐ DOUBLE SKIN
26h. Draft FWD AFT
26i. Operating Company
26j. Damage Amount DAMAGE TO BARGE $ CARGO $
26k. Describe Damage to Barge

PREVIOUS EDITIONS MAY BE USED

SN 7530-00-FO1-1730

REVERSE OF CG 2692 (REV. 6-81)

SECTION III. PERSONNEL ACCIDENT INFORMATION

27. Person Involved ☐ MALE or ☐ FEMALE ☐ DEAD ☐ MISSING ☐ INJURED

27a. Name (Last, First, Middle Name)

27b. Address (City, State, Zip Code)

27c. Status ☐ CREW ☐ PASSENGER ☐ OTHER (Specify)

28. Birth Date

29. Telephone No. (Area Code)

30. Job Position

31. (Check here if off duty) ☐

32. Employer (If different from Block 18., fill in Name, Address, Telephone No.)

33. Person's Time — YEAR(S) — MONTH(S)

A. IN THIS INDUSTRY
B. WITH THIS COMPANY
C. IN PRESENT JOB OR POSITION
D. ON PRESENT VESSEL/FACILITY
E. HOURS ON DUTY WHEN ACCIDENT OCCURRED

34. Industry of Employer (Towing, Fishing, Shipping, Crew Supply, Drilling, etc.)

35. Was the Injured Person Incapacitated 72 Hours or More? ☐ YES ☐ NO

36. Date of Death

37. Activity of Person at Time of Accident

38. Specific Location of Accident on Vessel/Facility

39. Type of Accident (Fall, Caught between, etc.)

40. Resulting Injury (Cut, Bruise, Fracture, Burn, etc.)

41. Part of Body Injured

42. Equipment Involved in Accident

43. Specific Object, Part of the Equipment in Block 42., or Substance (Chemical, Solvent, etc.) that directly produced the Injury.

SECTION IV. DESCRIPTION OF CASUALTY

44. Describe How Accident Occurred, Damage and Recommendations for Corrective Safety Measures. (Attach Additional Sheets if necessary).

45. Witness (Name, Address, Telephone No.)

46. Witness (Name, Address, Telephone No.)

SECTION V. PERSON MAKING THIS REPORT

47. Name (PRINT) (Last, First, Middle)

47a. Signature

47b. Address (City, State, Zip Code)

47c. Title

47d. Telephone No. (Area Code)

47e. Date

FOR COAST GUARD USE ONLY

REPORTING OFFICE

APPARENT CAUSE

CASUALTY CODE ABC

INVESTIGATOR (Name) — DATE — APPROVED BY (Name) — DATE

Reverse of CG-2692A (Rev. 6-82)

FOR BARGE CAUSING OR SUSTAINING DAMAGES

26. Name	26a. Official Number	26b. Type	26c. Length	26d. Gross Tons	26e. USCG Certificate of Inspection Issued At:
26f. Year Built	26g. ☐ SINGLE SKIN ☐ DOUBLE SKIN	26h. Draft FWD	AFT	26i. Operating Company	
26j. Damage Amount DAMAGE TO BARGE $ _____ CARGO $ _____		26k. Describe Damage to Barge			

FOR BARGE CAUSING OR SUSTAINING DAMAGES

26. Name	26a. Official Number	26b. Type	26c. Length	26d. Gross Tons	26e. USCG Certificate of Inspection Issued At:
26f. Year Built	26g. ☐ SINGLE SKIN ☐ DOUBLE SKIN	26h. Draft FWD	AFT	26i. Operating Company	
26j. Damage Amount DAMAGE TO BARGE $ _____ CARGO $ _____		26k. Describe Damage to Barge			

FOR BARGE CAUSING OR SUSTAINING DAMAGES

26. Name	26a. Official Number	26b. Type	26c. Length	26d. Gross Tons	26e. USCG Certificate of Inspection Issued At:
26f. Year Built	26g. ☐ SINGLE SKIN ☐ DOUBLE SKIN	26h. Draft FWD	AFT	26i. Operating Company	
26j. Damage Amount DAMAGE TO BARGE $ _____ CARGO $ _____		26k. Describe Damage to Barge			

FOR BARGE CAUSING OR SUSTAINING DAMAGES

26. Name	26a. Official Number	26b. Type	26c. Length	26d. Gross Tons	26e. USCG Certificate of Inspection Issued At:
26f. Year Built	26g. ☐ SINGLE SKIN ☐ DOUBLE SKIN	26h. Draft FWD	AFT	26i. Operating Company	
26j. Damage Amount DAMAGE TO BARGE $ _____ CARGO $ _____		26k. Describe Damage to Barge			

FOR BARGE CAUSING OR SUSTAINING DAMAGES

26. Name	26a. Official Number	26b. Type	26c. Length	26d. Gross Tons	26e. USCG Certificate of Inspection Issued At:
26f. Year Built	26g. ☐ SINGLE SKIN ☐ DOUBLE SKIN	26h. Draft FWD	AFT	26i. Operating Company	
26j. Damage Amount DAMAGE TO BARGE $ _____ CARGO $ _____		26k. Describe Damage to Barge			

FOR BARGE CAUSING OR SUSTAINING DAMAGES

26. Name	26a. Official Number	26b. Type	26c. Length	26d. Gross Tons	26e. USCG Certificate of Inspection Issued At:
26f. Year Built	26g. ☐ SINGLE SKIN ☐ DOUBLE SKIN	26h. Draft FWD	AFT	26i. Operating Company	
26j. Damage Amount DAMAGE TO BARGE $ _____ CARGO $ _____		26k. Describe Damage to Barge			

BILLING CODE 4910-14-C

List of Subjects

46 CFR Part 4

Administrative practice and procedure, Coast Guard, Investigations, Marine safety accidents, National Transportation Safety Board, Reporting requirements.

46 CFR Part 26

Marine safety, Penalties, Reporting requirements, Uninspected vessels, Navigation (water), Passenger vessels, Fishing vessels, Tow boats.

46 CFR Part 35

Hazardous materials, Transportation, Marine safety, Tank vessels, Barges.

46 CFR Part 76

Marine safety, Passenger vessels, Penalties, Reporting requirements, Navigation (water).

46 CFR Part 109

Reporting requirements, Vessels, Outer Continental Shelf, Marine safety accidents.

46 CFR Part 167

Fire prevention, Reporting requirements, Marine safety, Nautical school ships.

46 CFR Part 185

Marine safety, Small passenger vessels, Reporting requirements, Navigation (waters).

46 CFR Part 197

Diving accidents, Marine safety, Occupational safety and health, Vessels, Reporting requirements.

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

46 CFR PART 4—MARINE INVESTIGATION REGULATIONS

1. By revising § 4.05–10 to read as follows:

§ 4.05–10 Report by person in charge of vessel.

(a) In addition to the notice required by § 4.05–1, the person in charge of the vessel shall, as soon as possible, report in writing to the Officer in Charge Marine Inspection, at the port in which the casualty occurred or nearest the port of first arrival. The written report required for vessel or personnel accidents shall be made on Form CG–2692. The Form CG–2692A (Barge Addendum) may be used as needed and appended to Form CG–2692.

(b) If filed without delay, the Form CG–2692 may also provide the notice required by § 4.05–1.

[Approved by the Office of Management and Budget under OMB control number 2115–0003]

46 CFR PART 26—OPERATIONS

2. By revising § 26.08–10 to read as follows:

§ 26.08–10 Report by person in charge of vessel.

(a) In addition to the notice required by § 26.08–1, the person in charge of the vessel shall, as soon as possible, report in writing to the Officer in Charge, Marine Inspection, at the port in which the casualty occurred or nearest the port of first arrival. The written report required for vessel or personnel accidents shall be made on Form CG–2692. The Form CG–2692A (Barge Addendum) may be used as needed and appended to Form CG–2692.

(b) If filed without delay, the Form CG–2692 may also provide the notice required by 26.08–1.

[Approved by the Office of Management and Budget under control number 2115–0003]

46 CFR PART 35—OPERATIONS

3. By revising § 35.15–1(c) to read as follows:

§ 35.15–1 Notice of Casualty and voyage records—TB/ALL.

* * * * *

(c) In addition to notice required by paragraph (a) of this section, the person in charge of the vessel shall, as soon as possible, report in writing to the Officer in Charge, Marine Inspection, at the port in which the casualty occurred or nearest the port of first arrival. The written report required for vessel or personnel accidents shall be made on Form CG–2692. The Form CG–2692A (Barge Addendum) may be used as needed and appended to Form CG–2692. If filed without delay, the Form CG–2692 may also provide the notice required by § 35.15–1(a).

* * * * *

[Approved by the Office of Management and Budget under control number 2115–0003]

46 CFR PART 78—OPERATIONS

4. By revising § 78.07–10 to read as follows:

§ 78.07–10 Written report.

(a) In addition to the notice required by § 78.07–1, the person in charge of the vessel shall, as soon as possible, report in writing to the Officer in Charge, Marine Inspection, at the port in which the casualty occurred or nearest the port of first arrival. The written report required for vessel or personnel accidents shall be made on Form CG–2692. The Form CG–2692A (Barge Addendum) may be used as needed and appended to Form CG–2692.

(b) If filed without delay, the Form CG–2692 may also provide the notice required by § 78.07–1.

(Approved by the Office of Management and Budget under control number 2115–0003)

46 CFR PART 97—OPERATIONS

5. By revising § 97.07–10 to read as follows:

§ 97.07–10 Written report.

(a) In addition to the notice required by § 97.07–1, the person in charge of the vessel shall, as soon as possible, report in writing to the Officer in Charge Marine Inspection, at the port in which the casualty occurred or nearest the port of first arrival. The written report required for vessel or personnel accidents shall be made on Form CG–2692. The Form CG–2692A (Barge Addendum) may be used as needed and appended to Form CG–2692.

(b) If filed without delay, the Form CG–2692 may also provide the notice required by § 97.07–1.

(Approved by the Office of Management and Budget under control number 2115–0003)

46 CFR PART 109—OPERATIONS

6. By revising § 109.413 to read as follows:

§ 109.413 Written report of casualty.

The master or person in charge of a unit for which a report of casualty is made under § 109.411 shall, as soon as possible after the casualty occurs, report in writing to the Officer in Charge, Marine Inspection, on Form CG–2692. If filed without delay, the Form CG–2692 may also provide the notice required by § 109.411.

(Approved by the Office of Management and Budget under control number 2115–0003)

46 CFR PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

7. By revising § 167.65–65(c) to read as follows:

§ 167.65–65 Notice of casualty and records.

* * * * *

(c) In addition to the notice required by paragraph (a) of this section, the person in charge of the nautical school ship shall, as soon as possible, report in writing to the Officer in Charge, Marine Inspection, at the port in which the casualty occurred or nearest the port of first arrival. The written report required for vessel or personnel accidents shall

be made on Form CG–2692. If filed without delay, the Form CG–2692 may also provide the notice required by paragraph (a) of this section.

* * * * *

(Approved by the Office of Management and Budget under control number 2115–0003)

46 CFR PART 185—OPERATIONS

8. By revising § 185.15–10 to read as follows:

§ 185.15–10 Report by person in charge of vessel.

(a) In addition to the notice required by § 185.15–1, the person in charge of the vessel shall, as soon as possible, report in writing to the Officer in Charge, Marine Inspection, at the port in which the casualty occurred or nearest the port of first arrival. The written report required for vessel or personnel accidents shall be made on Form CG–2692. (b) If filed without delay, the Form CG–2692 may also provide the notice required by § 185.15–1.

(Approved by the Office of Management and Budget under control number 2115–0003)

46 CFR PART 196—OPERATIONS

9. By revising § 196.07–10 to read as follows:

§ 196.07–10 Written report.

(a) In addition to the notice required by § 196.07–1, the person in charge of the vessel shall, as soon as possible, report in writing to the Officer in Charge, Marine Inspection, at the port in which the casualty occurred or nearest the port of first arrival. The written report required for vessel or personnel accidents shall be made on Form CG–2692.

(b) If filed without delay, the Form CG–2692 may also provide the notice required by § 196.07–1.

(Approved by the Office of Management and Budget under control number 2115–0003)

46 CFR PART 197—GENERAL PROVISIONS

10. By revising § 197.486(a) to read as follows:

§ 197.486 Written report of casualty.

* * * * *

(a) On Form CG–2692, when the diving installation is on a vessel.

* * * * *

(Approved by the Office of Management and Budget under control number 2115–0003)

(Sec. 10, 18 Stat. 128 (33 U.S.C. 361); R.S. 4450, as amended (46 U.S.C. 239); R.S. 4405 (46 U.S.C. 375); 80 Stat. 938 (49 U.S.C. 1655(b)(1); 49 CFR 1.46(b)))

Dated: August 4, 1982.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 82–22260 Filed 8–13–82; 8:45 am]

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). 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	

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