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Tuesday
March 8, 1983

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Interstate Commerce Commission

Air Pollution Control
Environmental Protection Agency

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

Olives Grown in California; Amendment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule amends the administrative rules and regulations with respect to nomination procedures, public member and late assessment procedures of the California Olive Committee. The rules also specify the procedures for assessment crediting of handler paid advertising expenditures and removes an obsolete definition of "limited use" styles. The changes implement two recent amendments to the marketing order.

DATES: Interim rule effective March 8, 1983 through June 1, 1983; comments received by April 7, 1983 will be considered with regard to any subsequent rule.

ADDRESS: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250.

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

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of California olives for the benefit of producers, and will not substantially affect costs for those persons directly regulated.

The amendment of Subpart—Rules and Regulations (47 FR 13118, 51348) is issued under the marketing agreement, as amended, and Order No. 932, as amended (7 CFR Part 932, 47 FR 32905, 51092), regulating the handling of olives grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendations and information submitted by the California Olive Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

Section 932.52 was amended effective August 1, 1982 (47 FR 32905), to provide that the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR Part 52), instead of the U.S. Standards effective in 1971, apply for purposes of outgoing quality and limited use regulations. Thus, § 932.110 which adds "quartered" and "segmented" styles as those which may be produced from limited use size olives, is no longer applicable and should be terminated.

Effective August 1, 1982, § 932.29 was amended to provide that producer members of the Committee may be nominated through a combination of producer meetings and subsequent mail ballots, or such other procedure recommended by the Committee and approved by the Secretary. Thus, § 932.129 should be revised to provide that Committee members who represent producers shall be nominated through a prescribed combination of public meetings with or without mail ballots, as the Committee may determine. Section 932.129 should also be revised to specify who may vote in such nominations and who may serve on the Committee.

Effective August 1, 1982, § 932.25 was revised to provide that the size of the Committee may be increased from 16 members and alternates to 17 members and alternates through the selection of a public member and alternate who are not producers or handlers. Also, § 932.29(c) was added to provide that nominations for public member and alternate shall be submitted to the Secretary prior to April 16 of year in which nominations are made. Section 932.29(c) also provides that the Committee shall prescribe procedures for the selection and voting for each candidate. Thus, § 932.130 should be added to prescribe the qualifications for the public member and alternate and to permit the Committee to recommend its nominee to the Secretary.

Section 932.39(c) was added in 1982 (47 FR 32905) to permit the Committee with the approval of the Secretary to levy interest and/or late charges for assessments not paid to the Committee by handlers within prescribed period of time. Thus, § 932.139 should be added, which establishes for all assessments not received by the Committee within 30 days, a two percent late payment charge and an additional interest charge computed according to the number of days an assessment is delinquent beyond the 30 day payment period.

Finally, § 932.45 was amended in 1982 (47 FR 51092) to provide for the crediting a portion of a handler's direct expenditures for paid advertising for olives. Section 932.145 should be added to implement this provision. That section specifies the direct expenditures which may be so credited, the amount of assessments available for crediting, and the procedures handlers should follow to obtain credit.

It is found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of this interim rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553), and good cause exists for making these regulatory provisions effective as specified in that: (1) The changes implement recent amendments to the order which were discussed at a public hearing and subsequently approved in a referendum by olive growers; (2) olive handlers are aware of the changes and require no advanced preparation time; and (3) some of the changes represent a relief of restrictions or an application for benefits and no useful purpose is served by delaying the effective date of this action. Comments will be solicited for 30 days after publication and this document will be reviewed at that time.

List of Subjects in 7 CFR Part 932

Marketing agreements and orders, Olives and California.

PART 932—[AMENDED]

Therefore, Subpart—Rules and Regulations (7 CFR 932.108–932.161) is amended as follows:

1. Section 932.110 is hereby removed.

2. Section 932.129 is revised to read as follows:

§ 932.129 Nomination procedures for producer members.

Members and alternate members on the Committee who represent producers shall be nominated in accordance with the procedures specified in either paragraph (a) or paragraph (b) of this section as the Committee may determine.

(a) Mail ballot voting. (1) The Committee shall schedule a meeting, prior to March 1 of each odd-numbered year, in each producing district for the purpose of selecting candidates for member and alternate member nominations. A notice of such meetings will be mailed to each producer of record in each district. The nomination process is as follows:

(i) Any person who produces olives in a particular district may offer the name of any producer from that district as a candidate for either a member or alternate member position in said district.

(ii) A producer, who produces olives in more than one district, can be selected as a candidate for a member or alternate member position in only one district.

(iii) The Committee will notify by mail producers who are selected as candidates but are not in attendance at such meetings. Such producers have the right to decline such listing on the ballot within 7 days of mailing such notice.

(iv) In the event that no candidates or an insufficient number of candidates are selected as such meetings for the producer members and alternates in the respective districts, the Committee will give written notice to producers in said district that additional names may be submitted for the specified position(s).

(2) Following such meetings, and no later than March 15 of each odd-numbered year, the Committee shall prepare and mail a ballot to each producer that delivered olives during that crop year in each district.

(i) A producer who produces olives in more than one district must choose the district in which the producer will vote and notify the Committee of that choice. If the Committee is not notified and more than one ballot is received from such a producer, the first ballot received will be counted. Candidates may only vote in the district in which they are seeking nomination.

(ii) Each ballot will list separately the names of candidates for the member positions and the names of candidates for the alternate member positions for said district.

(iii) A ballot will be mailed to producers of record to give them an opportunity to vote. Committee records will be used to determine the list of producers eligible to cast ballots. However, any producer who is not identified in such records may receive a ballot if the Committee determines that such producer is eligible to participate in nominations in that district.

(iv) A producer may cast a vote for as many candidates as there are member or alternate positions in said district.

(v) The candidate on each list, as prescribed in subparagraph (a)(2)(ii) of this section, who receives the most votes will be the nominee for the first position, and until all positions for that district are filled, the candidates receiving the second, third and forth highest number of votes will be the nominees for the second, third and fourth position respectively.

(vi) In the event of a tie which would result in elimination of a tied candidate, a second ballot with the names of those tied candidates will be mailed to producers in said district for another vote.

(b) Nomination Meetings. In lieu of the mail ballot nomination procedure specified in paragraph (a) of this section, the Committee may schedule nomination meetings. In such an event, the following procedure will apply:

(1) Prior to March 15 of each odd-numbered year, the Committee shall schedule a nomination meeting to be held in each district for the purpose of obtaining nominees for producer members and alternate members for such district.

(2) Nominations for members and balloting thereon shall precede nominations and balloting for alternate members.

(3) The candidate for each position who receives the highest number of votes shall be the nominee for the position: *Provided,* That such candidate receives a majority of the ballots cast. If no candidate receives such a majority, the two candidates who received the highest number of votes shall participate in a run-off balloting to determine which is the nominee.

(c) For the purposes of this section, a producer is a person engaged in a proprietary capacity as a single business unit in the production of olives for market as packaged olives and includes an individual (owner-operated), partnership, corporation, association, institution, or other legal business unit.

(d) Determination of producer eligibility. (1) Only producers (including duly authorized officers or employees of producers) who produced olives within the district shall participate in the nomination and election of producer members and alternates.

(2) Each producer (as defined in paragraph (c) of this section) shall be entitled to cast only one vote for each position.

(3) A producer having olive acreage in more than one district may participate in nominations and elections in only one district. The district in which the producer wishes to participate shall be the producer's choice.

(4) Any member of a producer's family (husband, wife, son or daughter) may vote on behalf of an owner-operated, landlord-tenant, family enterprise, or other farming unit.

(5) Any authorized officer or employee of a corporation which is a producer may vote.

(6) Any authorized member of a partnership which is a producer may vote.

(7) Power of attorney (proxies) for voting purposes are not accepted.

3. Section 932.130 is added to read as follows:

§ 932.130 Public member and alternate public member eligibility requirements and nomination procedures.

(a) Eligibility requirements. (1) The public member and alternate public member shall not be a producer, handler, or family member (husband, wife, son or daughter) of a producer or handler of olives and shall have no direct financial interest in, nor be engaged in, the commercial production, marketing, buying, grading or processing of olives; nor shall they be either an officer, director, or employee, or family member of an officer, director, or employee of any firm engaged in such activities.

(2) The public member and alternative public member should be able to devote sufficient time and must express a willingness to attend subcommittee and committee activities regularly and to familiarize themselves with the background and economics of the olive industry.

(3) The public member and alternate public member must be residents of California.

(b) Nomination procedures. (1) Prior to April 16 of the year in which nominations are made, the Committee will recommend to the Secretary a public member and alternate public member for the Committee for a two-

year term of office beginning June 1 and ending May 31 of odd numbered years.

(2) The Committee will solicit, interview and recommend to the Secretary its nominees for public member and alternate public member.

(3) A majority vote is required in Committee actions concerning the nomination of the public member and alternate public member.

4. Section 932.139 is added to read as follows:

§ 932.139 Late payment and interest charges.

(a) The Committee shall impose a late payment charge on any handler whose assessment has not been received in the Committee's office within 30 days of the invoice date shown on the handler's assessment statement. The late payment charge shall be two percent of the unpaid balance.

(b) In addition, the Committee shall impose an interest charge on any handler whose assessment payment has not been received in the Committee's office within 30 days of the invoice date. The interest charge shall be the current commercial prime rate at the Committee's bank and shall be applied thereafter to the unpaid balance and late payment charge for the number of days an assessment is delinquent beyond the 30 day payment period.

5. Section 932.145 is added to read as follows:

§ 932.145 Marketing promotion, including paid advertising and crediting for handler paid brand advertising.

(a) In order for a handler to receive credit for paid brand advertising expenditures against the handler's pro rata expense assessment obligations pursuant to § 932.45, the Committee shall determine that such expenditures meet the applicable requirements of this section.

(1) Creditable direct expenditures shall mean the actual money spent for advertising space in magazines, newspapers, outdoor media, transit, or other similar print media not otherwise prohibited in this section, or time charges for radio, television and other similar electronic media: *Provided,* That the amount of the creditable expenditures shall be the gross media cost as listed on the invoice, less any frequency or cash discounts earned.

(2) For an advertisement resulting from joint participation by a handler and one or more manufacturers or sellers of complementary commodities or products, and including the brands of all participants, the handler's credit shall be the amount computed according to the handler's proportional share of the total allowable payment to the advertising medium, or the handler's payment thereof, whichever is less.

(3) Production costs, preparation expense, travel allowances, costs relating to pre-testing of advertising, test marketing, directory advertising, point of sale material, premiums, trade promotional allowances, coupon redemption fees, or other expenses not directly connected with paid space or time costs, shall not be eligible for such assessment crediting.

(4) "Brand" is defined as those brands which are controlled, owned and registered by regulated olive handlers, or their parent or subsidiary companies.

(b) Pursuant to § 932.39, assessments shall be paid by each handler in each fiscal year to cover the Committee's expenses as approved by the Secretary pursuant to § 932.38.

(1) Such assessment funds shall first be made available to cover the Committee's administrative expenses, and if applicable, expenses for research and crop estimates.

(2) Any remaining assessment funds over the amount budgeted pursuant to paragraphs (b)(1) up to an additional $8 per ton, shall be used for the Committee's generic advertising and marketing promotion projects.

(3) Any remaining assessment funds over the amounts budgeted pursuant to paragraph (b)(1) and (2), up to an additional $8 per ton, shall be made available for crediting a handler's direct expenditures for paid brand advertising; and

(4) Any remaining assessment funds over the amounts budgeted pursuant to paragraphs (b)(1), (2) and (3) shall be allocated equally for:

(i) The Committee's generic advertising and marketing promotion projects; and

(ii) Crediting a handler's direct expenditures for paid brand advertising.

(c) Each advertisement must be published, broadcast, or displayed during the fiscal year in which credit is requested, except:

(1) The initial period shall begin on September 1, 1982, and end on December 31, 1983; and

(2) That a maximum of 34 percent of a handler's total assessment obligation available for crediting advertising expenditures as of December 31 of each fiscal year, may be included as an assessment obligation in the succeeding fiscal year, but must be so credited no later than June 30 of such succeeding fiscal year with documentation to be filed with the Committee no later than the following August 31. Any such remaining assessment funds not credited are due to the Committee no later than the following September 15.

(d) Except as provided in paragraph (c), assessments available to a handler for crediting but not so credited by December 1 shall become due and payable by December 1, except that the creditable brand advertising scheduled after December 1 may be deducted from the assessment due provided a purchase order, insertion order or other documents showing that intention to advertise is submitted by December 1. The submission of intentions to advertise will not relieve a handler from the obligation of submitting proof of performance for the expenditure.

(e) Handlers who meet the applicable requirements specified in this section shall be credited with 100 percent of such allowable expenditures, but the total amount credited shall not exceed their individual prorate share of the total amount assessable for brand credit for that fiscal year.

(f) Except as provided in paragraph (c) of this section, any funds available for the assessment credit for handler paid brand advertising but not so credited, shall be paid to the Committee as provided in § 932.39, and such funds shall be placed in the Committee's reserves pursuant to § 932.40 (a)(2).

(g) A handler must file a claim with the Committee to obtain credit for advertising expenditure. Each claim must be submitted in writing and accompanied by appropriate proof of performance as follows:

(1) For published advertisements, a copy of the publication invoice, agency invoice, if any, and tear sheet of the advertisment;

(2) For radio advertisements, a copy of the station invoice, a copy of the script, or reference to a copy on file with the Committee, and the agency invoice, if any;

(3) For television advertisements, a copy of the station invoice, script, and tape or story board of the advertisement, or a reference to these in the Committee files, and the agency invoice, if any;

(4) For outdoor advertisements, a copy of the company invoice, a photograph of the display or a reference to a photograph in the Committee files, and the agency invoice, if any;

(5) Or such other proof of performance and invoice as may be approved by the Committee.

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

Dated: March 3, 1983.

D. S. Kuryloski,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 83-5684 Filed 3-7-83; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1030

Milk in the Chicago Regional Marketing Area; Notice of Temporary Revision of Shipping Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Temporary revision of rule.

SUMMARY: This action relaxes the shipping requirement for pool supply plants under the Chicago Regional milk order for the month of March 1983. The action will prevent uneconomic shipments of milk to the market and will help maintain the pool status of producers who regularly supply the market. The revision is made in response to requests of cooperative associations of producers supplying the market.

EFFECTIVE DATE: March 8, 1983.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, 202-447-7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of proposed temporary revision of shipping standards: Issued February 3, 1983; published February 8, 1983 (48 FR 5747).

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

Also, it has been determined that the need for adjusting certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the **Federal Register**. However, this would not permit the completion of the procedure in time to give interested parties timely notice that the supply plant shipping requirement for March 1983 would be modified. The initial request for the action was received on January 25, 1983. Public comments on the proposed action were due February 18, 1983.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to assure that the market would be adequately supplied with milk for fluid use with a smaller proportion of milk shipments from pool supply plants.

This temporary revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the provisions of § 1030.7(b)(5) of the Chicago Regional milk order.

Notice of proposed rulemaking was published in the **Federal Register** (48 FR 5747) concerning a proposed decrease in the shipping requirement for pool supply plants for the month of March 1983. The public was afforded the opportunity to comment on the proposal by submitting written data, views and arguments. Two comments were received in favor of the proposed reduction.

After considering all relevant material, including the proposal set forth in the aforesaid notice, data, views, and arguments filed, and other available information, it is hereby found and determined that for the month of March 1983 the supply plant shipping percentage should be reduced temporarily by 2 percentage points from 20 percent to 18 percent.

Pursuant to the provisions of § 1030.7(b)(5) the supply plant shipping percentages set forth in § 1030.7(b) may be increased or decreased by up to 10 percentage points during the months of September through March to encourage additional milk shipments to pool distributing plants or to prevent uneconomic shipments.

The Central Milk Sales Agency (Agency), representing six cooperative associations whose members provide the majority of producer milk associated with the market, requested that the supply plant shipping percentage be decreased by 5 percentage points for March 1983. As proposed, the shipping percentage would be reduced from 20 percent to 15 percent of a supply plant's receipts of milk from producers. The request was based on two anticipated changes in the marketing conditions in the Chicago market. The proponents stated that during February a Chicago pool distributing plant would stop bottling milk and its associated distributing plant unit would cease to exist. With the loss of fluid milk sales due to the plant's closure, fewer shipments of milk from supply plants would qualify as producer milk under the order. Secondly, the proponents stated that they intended to begin delivering direct-shipped producer milk to another distributing plant in the Chicago area. These direct-shipped milk deliveries would result in fewer needed shipments from supply plants.

The Agency estimated that during March its milk receipts would be 542 million pounds and the qualifying shipments to fluid milk handlers would be 98 million pounds. These qualifying shipments would represent 18.1 percent of its producer receipts. The Agency stated in its request that reducing the required percentage of milk that must move from a supply plant, or units of supply plants, would prevent inefficient and uneconomic movements of milk solely for the purpose of qualification. The Agency stated that a reduction in the shipping percentage for pool supply plants is warranted to prevent uneconomic movements of milk.

Interested parties were given an opportunity to submit written data, views and arguments concerning the proposed revision. Comments were received from the proponent cooperative associations of the Central Milk Sales Agency and another cooperative association which supported the reduction in the supply plant shipping requirement. The Agency's spokeman stated that the Chicago pool distributing plant had stopped bottling milk on February 3, 1983, as anticipated in its revision request. The spokesman submitted information that showed that during the last year an average of 7 million pounds of milk had been pooled with the distributing plant unit each month. He stated that another cooperative association would begin supplying the other plant which had been associated in the unit with the closed bottling facility and the Agency would lose those sales on February 21, 1983.

The Agency also stated that it had begun supplying another distributing plant with direct-shipped milk, as anticipated in the revision request. The spokesman indicated that in March more than 6 million pounds of milk would be direct-shipped and an equivalent amount no longer would be needed from supply plants. With fewer shipments needed from supply plants, the proponents concluded that the temporary reduction in the supply plant shipping requirement should be granted as requested for March 1983 to prevent uneconomic movements of milk.

The total receipts of milk from producers for March are expected to be 1,140 million pounds, with 1,091 million pounds expected to be received at supply plants. Approximately 49 million pounds are expected to be received at pool distributing plants directly from producers. The volume of pooled Class I sales during March is anticipated to be

258 million pounds. At the 20 percent shipping percentge for March, the qualifying shipments from supply plants would be 218 million pounds. The volume of unneeded shipments from supply plants would approach 9 million pounds in March.

Reducing the supply plant shipping percentage for March by the requested 5 percentage points to 15 percent would require approxmiately 164 million pounds of qualifying shipments from supply plants. With projected Class I use at 258 million pounds, the difference is substantially greater than the 49 million pounds of expected direct-shipped milk. Thus, a 15 percent shipping standard for March would be too low to assure that distributing plants would have adequate supplies of milk for fluid use.

At an 18 percent shipping percentage for March, qualifying shipments from supply plants would be about 196 million pounds. At this level of shipments, distributing plants should be adequately supplied for March because most of the difference between shipments from supply plants and anticipated Class I use could be made up from direct-shipped milk.

The revised minimum shipping percentage is based essentially on projections of the marketing trends for the entire Chicago Regional market. The proponents' projections for their own operations vary somewhat from the entire projections for the entire market. Because the proponent cooperatives provide the majority of the producer milk associated with the market, additional weight has been given to their projections in setting the revised minimum shipping percentage for March.

On the basis of available information, it is concluded that the supply plant shipping percentage should be reduced to 18 percent for March.

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

(a) This temporary revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the month of March 1983;

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

(c) Notice of the proposed temporary revision was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this temporary revision. No comments in opposition to the proposed temporary revision were received.

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

List of Subjects in 7 CFR Part 1030

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of the order are hereby revised for the month of March 1983.

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

Effective Date: March 8, 1983.

Signed at Washington, D.C., on: March 3, 1983.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 83–5837 Filed 3–7–83; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 8

[Docket No. 83–11]

Assessment of Fees; National Banks; District of Columbia Banks

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (Office) is revising 12 CFR 8.7 to delete the reference to the specific dollar amount of the hourly fee charged for trust examinations. The amendment is technical and does not affect the manner in which the hourly fee is calculated. Revision is necessitated to eliminate the possibility of annual revisions to the regulation. Institutions subject to the hourly fee will be notified of any change in the hourly fee resulting from the required annual review.

EFFECTIVE DATE: March 28, 1983.

FOR FURTHER INFORMATION CONTACT:
Dennis J. Arczynski, Project Manager, Financial Operations Division, Office of the Comptroller of the Currency, Washington, D.C. 20219, (202) 447–1878,
or
Jerome Edelstein, Attorney, Legal Advisory Services Division, Office of the Comptroller of the Currency, Washington, D.C. 20219, (202) 447–1880.

SUPPLEMENTARY INFORMATION: The principal drafters of this document are Dennis J. Arczynski, Project Manager, Financial Operations Division, Office of the Comptroller of the Currency, Washington, D.C. 20219, (202) 447–1878, and Jerome Edelstein, Attorney, Legal Advisory Services Division, Office of the Comptroller of the Currency, Washington, D.C. 20219, (202) 447–1880.

This Office is amending the portion of 12 CFR Part 8.7(c) to delete the specific reference to the dollar amount of the hourly rate charged for trust examinations. In line with this revision, 12 CFR 8.7(d) is also amended by deleting the reference to this hourly rate. Deletion of the reference to the $32.44 hourly rate for examinations commencing after December 31, 1980, would eliminate the administrative costs associated with possible annual revisions to the regulation. This amendment will not affect the calculation of the hourly rate and this Office will follow the prescribed methodology in its required annual review of the expenses associated with the hourly rate. Institutions subject to this hourly rate will be notified of any change in the hourly rate resulting from this annual review and 12 CFR 8.7(b) is amended to reflect this. The hourly rate for examinations will be increased to $40.00. Notice of this change will be sent to all affected institutions prior to the effective date of the change. This rate will remain in effect until affected institutions are notified of any subsequent change.

The Secretary of the Treasury has certified that this amendment will not have a significant impact on a substantial number of small banks.

The Office has determined that this amendment does not meet any of the tests for a regulatory impact analysis as required by Executive Order 12291.

The Office has determined that notice and comment or a 30-day delay of implementation pursuant to the Administrative Procedures Act is unnecessary because this amendment constitutes a technical change in the wording of the regulation and because this change has no substantive impact on those subject to 12 CFR 8.7.

List of Subjects in 12 CFR Part 8

National banks, Assessment of fees.

PART 8—[AMENDED]

For the reasons set out in the preamble, Part 8 of Chapter I of Title 12 of the Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 8 is:

Authority: R.S. 5240, as amended, 12 U.S.C. 481, 482, 12 U.S.C. 3102, and in Section 3, 47 Stat. 1566, 26 D.C. Code 102.

2. Section 8.7 is amended by revising (b), (c) and (d) to read as follows:

§ 8.7 Hourly rate for trust examinations.

* * * * *

(b) To assure continued compliance with the statutory requirement, national banks and other entities with trust departments examined by this Office are assessed a fee which recovers the total direct and overhead expenses of the examination. This fee will be reviewed annually according to the method set forth in paragraph (d) of this section to determine whether changes in such expenses require a revision of the fee. The Office shall notify institutions subject to this fee of any change in the hourly rate resulting from this annual review.

(c) The total fee a trust examination is the hourly fee multiplied by the number of hours examiners spend at the bank and the number of hours spent by examiners working on the examination report while outside of the bank. The Office will waive the fee for time spent by examiners with less than six months of experience and for those hired on a temporary basis.

(d) The hourly rate represents the total expenses of conducting trust examinations as set forth in the budget for the year in which the hourly fee is applicable, divided by the projected number of billable hours for that year.

* * * * *

Dated: March 2, 1983.

C. T. Conover,

Comptroller of the Currency.

[FR Doc. 83-5842 Filed 3-7-83; 8:45 am]

BILLING CODE 4810-33-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 101

[Revision 2—Amendment 26]

Delegation of Authority To Conduct Program Activities in Field Offices

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Regional Administrator in Region IV, proposed a revision to the delegated authority for field offices in his region that would give designated Senior Loan Specialists authority to approve, decline, or take servicing and liquidation actions on loans. These designated officers would have delegated authority equal to the Supervisory Loan Specialist, Financing Division, District Office (D/O), the Supervisory Loan Specialist, Portfolio Management, D/O, and the Supervisory Loan Specialist, Liquidation, D/O, but with no supervisory authority for responsibility. The Senior Loan Specialists would function under supervision of a regular supervisor such as a Deputy District Director, an Assistant District Director/Finance and Investment, or a Chief, Financing Division and would free the Supervisory Loan Officers from some of their routine work, allow them more time for the management of a broader segment of their offices and additionally, would greatly improve the supervisor/employee ratio.

This proposal was approved on a "pilot project" basis for Region IV only. The results concluded from this "project" will be reviewed for retention and possible national usage.

EFFECTIVE DATE: March 8, 1983; not to exceed 1 year.

FOR FURTHER INFORMATION CONTACT: Ronald Allen, Paperwork Management Branch, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416. Telephone No. (202) 653-8538.

SUPPLEMENTARY INFORMATION: Part 101 consists of rules relating to the Agency's organization and procedures; therefore, notice of proposed rulemaking and public participation thereon as prescribed in 5 U.S.C. 553 is not required and this amendment to Part 101 is adopted without resort to those procedures.

List of Subjects in 13 CFR Part 101

Authority delegations (Government agencies), Administrative practice and procedure, Organization and functions (Government agencies).

PART 101—[AMENDED]

§ 101.3-2 [Amended]

For the reasons set forth in the preamble and pursuant to authority in Section 5(b)(6) of the Small Business Act, 15 U.S.C. 634, Part 101, 13 CFR 101.3-2 is amended as set forth below:

* * * * *

1. Part I, Section A, paragraph 1.a. add a new subparagraph (10) as below, and recodify existing subparagraphs (10) through (14) as (11) through (15).

(10) Senior Loan Specialist, Financing, D/O, Region IV only, 250,000, 350,000.

2. Part I, Section A, paragraph 1.b. add a new subpargraph (10) as below, and recodify existing subparagraphs (10) through (16) as (11) through (17).

(10) Senior Loan Specialist, Financing, D/O, Region IV only, 250,000, 500,000.

3. Part I, Section B, paragraph 2.a. add a new subparagraph (10) as below, and recodify existing subparagraphs (10) and (11) as (11) and (12).

(10) Senior Loan Specialist, Financing, D/O, Region IV only.

4. Part I, Section B, paragraph 2.b. add a new subparagraph (10) as below, and recodify existing subparagraphs (10) and (11) as (11) and (12).

(10) Senior Loan Specialist, Financing, D/O (on fully undisbursed loans), Region IV only.

5. Part I, Section B, paragraph 3.b. add a new subparagraph (2) as below.

(2) Senior Loan Specialist, Financing, D/O (on fully undisbursed loans), Region IV only.

6. Part I, Section B, paragraph 4. add a new subparagraph j. as below, and recodify existing subparagraphs j. and k. as k. and l.

(j) Senior Loan Specialist, Financing, D/O (on fully undisbursed loans), Region IV only.

7. Part IV, Section A, paragraph 1.d. add a new subparagraph (10) as below, and recodify existing subparagraphs (10) through (12) as (11) through (13).

(10) Senior Loan Specialist, Portfolio Management or Liquidation Section, D/O, Region IV only.

Dated: March 3, 1983.

James C. Sanders,

Administrator.

[FR Doc. 83-5807 Filed 3-7-83; 8:45 am]

BILLING CODE 8025-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C-3017]

AHC Pharmacal, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

Correction

In FR Doc. 83-4899 beginning on page 8267 in the issue of Monday, February 28, 1983, make the following corrections:

1. On page 8267, third column, third paragraph, seventh line from the bottom, "not" should read "now".

2. On page 8268, first column, last paragraph, fourth line, "necessary." should read "unnecessary."

BILLING CODE 1505-01-M

TENNESSEE VALLEY AUTHORITY

18 CR Part 1304

Interpretation of "Owner"; Navigable Houseboats and Floating Boathouses

AGENCY: Tennessee Valley Authority.

ACTION: Interpretation of rule.

SUMMARY: The Tennessee Valley Authority is giving public notice of its interpretation of its rules set forth at 18

CFR 1304.203(c) and 1304.204(b) requiring the owners of nonnavigable houseboats and floating boathouses with living quarters located on TVA reservoirs and not moored in commercial boat harbors to moor them only where such owners either also own the abutting shoreland property or have the abutting owner's permission to moor opposite the abutting owner's property. The question has arisen in administration of this rule whether one of several coowners of the abutting shoreland may, by virtue of such partial ownership, moor a houseboat there over the objection of the coowners. The interpretation is intended to make clear that a coowner may not and that the word "owner" as used in the rules interpreted means all of the owners.

FOR FURTHER INFORMATION CONTACT: John R. Paulk, Director of Land and Forest Resources, Tennessee Valley Authority, Norris, Tennessee 37828, telephone 615–632–6450, FTS No. 856–6450.

PART 1304—[AMENDED]

18 CFR Part 1304 is amended by adding the following appendix to §§ 1304.203 and 1304.204 as follows:

Appendix—Interpretation

1. Sections 1304.203(a) and 1304.204(b) of Title 18 of the Code of Federal Regulations prohibit new nonnavigable houseboats and new floating boathouses not meeting the requirements of § 1304.205(d) in TVA reservoirs. These sections also provide that existing nonnavigable houseboats approved for continued mooring on TVA reservoirs and all floating boathouses shall be moored: (1) To mooring facilities provided by a commercial dock operator within the designated harbor limits of his dock; or (2) to the bank of the reservoir outside the designated harbor limits of commercial boat docks, if the houseboat or boathouse owner is the owner or lessee of the abutting property at the mooring location (or the licensee of such owner or lessee) and has requested and obtained from TVA, pursuant to § 1304.205, written approval authorizing mooring at such location.

In all cases where more than one person owns or leases the abutting property at a present or proposed mooring location as tenants in common or in any other sort of cotenancy, TVA interprets the terms "the owner or lessee of the abutting property" and "such owner or lessee" in 18 CFR 1304.203(c)(2) and 1304.204(b)(2) as meaning all of the owners of such abutting property. The owner or owners of only a fractional interest or of fractional interests totalling less than one in any such property shall under no circumstances be considered, by virtue of such fractional interest or interests only, to be the "owner or lessee" of such abutting property for the purposes of 18 CFR § 1304.203(c)(2) or § 1304.204(b)(2) and, as such, eligible to moor or license others to moor as provided therein without the consent of the other coowners.

(Sec. 26a of the Tennessee Valley Authority Act of 1933, *as amended* (16 U.S.C. 831y–1))

Dated: February 14, 1983.

W. F. Willis,

General Manager.

[FR Doc. 83–5846 Filed 3–7–83; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Director, Bureau of Foods, et al., Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting its final rule that amended the regulations for delegations of authority on food- and color-related matters to update current delegations and add new delegations to Bureau of Foods' officials.

EFFECTIVE DATE: February 4, 1983.

FOR FURTHER INFORMATION CONTACT: Theodore E. Herman, Regulations Policy Staff (HFC–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION: In FR Doc. 83–3108 appearing at page 5251 in the issue for Friday, February 4, 1983, the following corrections are made on page 5252 in the center column:

PART 5—[AMENDED]

1. "§ 5.61 **Food standards, food additives, and color additives.**" is corrected to read "§ 5.61 **Food standards, food additives, generally recognized as safe (GRAS) substances, and color additives.**"

2. In § 5.61(a), the phrase "and notices of filing of petitions on food additives and color additives that relate to the assigned functions of the respective Bureau." is corrected to read "and notices of filing of petitions on food additives, generally recognized as safe (GRAS) substances, and color additives that relate to the assigned functions of the respective Bureau."

3. In § 5.61(c), the phrase "under section 706(d)(1) of the act" is corrected to read "under section 409(c)(2) of the act or to color additive petitioners under section 706(d)(1) of the act."

Dated: March 1, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83–5686 Filed 3–7–83; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 529

Certain Other Dosage Form New Animal Drugs Not Subject to Certification; Amikacin Sulfate Intrauterine Solution

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Bristol Laboratories providing for safe and effective use of amikacin sulfate solution for treating genital tract infections in mares.

EFFECTIVE DATE: March 8,1983.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Bureau of Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

SUPPLEMENTARY INFORMATION: Bristol Laboratories, Division of Bristol-Myers Co., Syracuse, NY 13201, filed NADA 127–892 providing for intrauterine infusion of amikacin sulfate solution for treating genital tract infections (endometritis, metritis, and pyometra) in mares when caused by susceptible organisms including *E. coli*, *Pseudomonas* spp., and *Klebsiella* spp. Well-controlled studies demonstrated safety and effectiveness of the product for the proposed conditions of use. The NADA is approved, and the regulations are amended to reflect this approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Bureau's finding of no

significant impact and the evidence supporting this finding, contained in a statement of exemption (pursuant to 21 CFR 25.1(f)(1)(ii) (*a*) and (*e*)), may be seen in the Dockets Management Branch (address above), between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 529

Animal drugs, Miscellaneous use.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i) 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 529 is amended by adding new § 529.50, to read as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

§ 529.50 Amikacin sulfate intrauterine solution.

(a) *Specifications.* Each milliliter of sterile aqueous solution contains 250 milligrams of amikacin (as the sulfate).

(b) *Sponsor.* See No. 000015 in § 510.600(c) of this chapter.

(c) *Conditions of use.*—(1) *Amount.* Two grams (8 milliliters) diluted with 200 milliliters of sterile physiological saline per day for 3 consecutive days.

(2) *Indications for use.* For treating genital tract infections (endometritis, metritis, and pyometra) in mares when caused by susceptible organisms including *E. coli, Pseudomonas* spp., and *Klebsiella* ssp.

(3) *Limitations.* For intrauterine infusion in the horse only. Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. May 9, 1983.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 1, 1983.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 83-5840 Filed 3-7-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs in Animal Feeds; Hygromycin B

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Zip Feed Mills, Inc., providing for making an 0.6-gram-per-pound hygromycin B premix from both 2.4- and 8-gram-per-pound hygromycin premixes. The intermediate premix is used for making complete swine feeds for control of infestations of large roundworms, nodular worms, and whipworms and for making complete chicken feeds for control of large roundworms, cecal worms, and capilliary worms.

EFFECTIVE DATE: March 8, 1983.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Bureau of Veterinary Medicine (HFV–128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

SUPPLEMENTARY INFORMATION: Zip Feed Mills, Inc., P.O. Box 500, 304 E. Eighth St., Sioux Falls, SD 57101, is the sponsor of NADA 132–616 providing for use of 2.4- and 8-gram-per-pound hygromycin premixes to make a 0.6-gram-per-pound hygromycin B premix. The intermediate premix is used to make complete swine feeds for the control of infestations of large roundworms, nodular worms, and whipworms and complete chicken feed for the control of infestations of large roundworms, cecal worms, and capillary worms. The NADA was filed by Elanco Products Co. for the sponsor Zip Feed Mills, Inc. Approval of this NADA is based on safety and effectiveness data contained in Elanco's approved NADA's 10–918 and 11–948. Elanco has authorized use of the data in NADA's 10–918 and 11–948 to support approval of this application. This approval does not change the approved use of the drug. Consequently, approval of the NADA poses no increased human risk of exposure to residues of the animal drug, nor does it change the conditions for the drug's safe use in the target animal species.

Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), this approval does not require reevaluation of the safety and effectiveness data in NADA's 10–918 and 11–948. NADA 132–918 is approved, and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (address above).

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

List of Subjects in 21 CFR Part 558

Animal drugs; Animal feeds.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360(i))) and under authority delegated to the Commissioner Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.274 *Hygromycin B* by adding, in numerical sequence, drug labeler code "017434" to paragraph (a)(4) and to the "Sponsor" column in paragraph (e)(1)(i) and (ii).

Effective date, March 8, 1983.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: February 23, 1983.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 83-5839 Filed 3-7-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lincomycin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for Feed Specialties Co. providing for use of 50-gram-per-pound lincomycin premixes to manufacture intermediate premixes subsequently used in swine feeds for treatment and/or control of dysentery.

EFFECTIVE DATE: March 8, 1983.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Bureau of Veterinary Medicine (HFV–128), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

SUPPLEMENTARY INFORMATION: Feed Specialties Co., 1877 NE. 58th Ave., Des Moines, IA 50313, is sponsor of NADA 132–660 filed in its behalf by the Upjohn Co. The NADA provides for use of 50-

gram-per-pound lincomycin premixes to manufacture 4-, 8-, and 20-gram-per-pound lincomycin intermediate premixes for subsequent incorporation into complete swine feeds. The swine feeds are used for control and/or treatment of swine dysentery as provided in 21 CFR 558.325(f)(2) (i), (ii), and (iii). The basis of approval of this NADA is discussed fully in the freedom of information (FOI) summary. Based on the data and information submitted, the NADA is approved and the regulations are amended to reflect the approval.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 558.325 is amended by adding new paragraph (b)(10) to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.325 Lincomycin.

* * * * *

(b) *Approvals.* * * *

(10) Premix levels of 4, 8, and 20 grams per pound have been granted to No. 017274 in § 510.600 of this chapter for use as in paragraph (f)(2) (i), (ii), and (iii) of this section.

* * * * *

Effective date. March 8, 1983.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: March 1, 1983.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 83-5641 Filed 3-7-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-049A]

Occupational Exposure to Lead; Respirator Fit Testing; Corrections

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; corrections.

SUMMARY: OSHA is correcting certain inadvertent errors which appeared in the final rule on respirator fit testing in the lead standard, published on November 12, 1982 (47 FR 51110). The irritant smoke protocol for qualitative fit testing as published in the new Appendix D to 29 CFR 1910.1025 incorrectly required an isoamyl acetate pretest and a combination filter cartridge. These requirements are now being deleted. The saccharin protocol as published incorrectly omitted reference to nebulizers equivalent to the DeVilbiss model 40. This omission is being corrected.

DATE: These corrections are effective on March 8, 1983.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Rm. N-3637, 200 Constitution Avenue, NW., Washington, D.C. 20210; telephone 202-523-8151.

SUPPLEMENTARY INFORMATION: On November 12, 1982, OSHA published an amendment to the lead standard, 29 CFR 1910.1025 (47 FR 51110). This amendment allowed negative pressure half mask respirators to be fitted by qualitative fit testing (QLFT) as an alternative to quantitative fit testing (QNFT) as long as such testing was done according to the protocols set forth in a new Appendix D to the standard. One of the three protocols set forth in Appendix D was based on the use of an irritant smoke. This protocol was intended to be essentially the same as that described by AISI in its post-hearing submission (Exhibit 41), since OSHA had determined it provided adequate employee protection. However, the protocol as published on November 12, 1982, erroneously required an isoamyl acetate pretest as part of the procedures and a combination filter cartridge. Both of these elements had been included in a previous version submitted by AISI, but were not intended to be included in the final version, accepted by OSHA. Therefore, Appendix D to § 1910.1025 is being corrected to agree with the supporting documentation, by no longer requiring combination filter cartridges and by removing the requirement to pretest with isoamyl acetate.

Another of the protocols set forth in Appendix D was based on the use of a saccharin solution aerosol. This aerosol is produced by a nebulizer. The published protocol inadvertently omitted a phrase which would allow use of nebulizers which are equivalent to the DeVilbiss model 40 in producing a saccharin solution aerosol. The use of equivalent nebulizers which would produce the same particle size distribution at the same concentration as the DeVilbiss model 40 was proposed (46 FR 27358) and OSHA intended to allow their use in Appendix D.

List of Subjects in 29 CFR Part 1910

Occupational safety and health, Respiratory protection.

PART 1910—[AMENDED]

Accordingly OSHA is correcting Appendix D of 29 CFR 1910.1025 as follows:

1. Appendix D, II, A, step 5 and Appendix D, II, C, step 5 are corrected by inserting "or equivalent," after the word "Nebulizer" in the first sentence in each case.

2. Paragraph A in Appendix D, Section III, Irritant Fume Protocol, is corrected to read as follows:

A. Respirator selection.

Respirators shall be selected as described in section IB above, except that each respirator shall be equipped with high efficiency cartridges.

3. Paragraph B, Fit Test, in Appendix D, Section III is corrected as follows:

a. Step B1 is corrected to read: The test subject shall be allowed to smell a weak concentration of the irritant smoke to familiarize him with its characteristic odor.

b. Steps B5 and B6 are deleted.

c. The subsequent steps are renumbered as B5 through B12.

d. Renumbered step B11 (formerly B13) is corrected to read: Steps B4, B7, and B8 of this protocol shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the irritant smoke.

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave. NW., Washington, D.C. 20210.

(Sec. 6 Pub. L. 91-596, 84 Stat. 1593 (29 U.S.C. 655), 29 CFR Part 1911; 41 U.S.C. 35, 38; Secretary of Labor's Order No. 8-76 (41 FR 25059))

Signed at Washington, D.C. this 28th day of February 1983.

Thorne G. Auchter,

Assistant Secretary of Labor.

[FR Doc. 83-5687 Filed 3-7-83; 8:45 am]

BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 30

[OA-FRL 2317-1]

General Grant Regulations and Procedures

AGENCY: Environmental Protection Agency.

ACTION: Deviation to rule.

SUMMARY: Under the authority of 40 CFR 30.1000, the Environmental Protection Agency (EPA) has issued a class deviation from 40 CFR 30.720(a) of EPA's general grant regulations for cooperative agreements awarded under Section 3012 of the Resource Conservation and Recovery Act (RCRA). This deviation waives EPA's usual five percent cost-sharing requirement for assistance award recipients. We are publishing the class deviation as a part of this document.

EFFECTIVE DATE: This deviation was effective on February 16, 1983.

FOR FURTHER INFORMATION CONTACT: Marshall Schy, Grants Administration Division (PM-216), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 (202-382-5298).

SUPPLEMENTARY INFORMATION: Section 3012 of the Resource Conservation and Recovery Act provides for State programs to develop inventories of hazardous waste and disposal sites. Congress appropriated $10,000,000 from the Hazardous Substance Response Trust Fund, established under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), to carry out section 3012. This one-time appropriation will be used to assist States in completing the site assessment and inspection process already begun under CERCLA.

EPA believes these are several reasons for not requiring grantees to share the cost of this program. First, preliminary assessments and site inspections, which will be given priority under this program, presently are not subject to cost-sharing requirements under CERCLA. Second, requiring cost sharing would delay the implementation of program activities until States were able to provide additional funds to meet their share. It also would delay meeting EPA's goals for carrying out preliminary assessments and site inspections. Finally, requiring cost sharing under section 3012 might, because of limited resources, make it difficult for States to meet their cost sharing obligations under CERCLA projects.

A copy of the class deviation follows this document.

Dated: February 16, 1983.

John P. Horton,

Assistant Administrator for Administration (PM-208).

Dated: February 14, 1983.

Michael A. Brown,

Acting Assistant Administrator for Solid Waste and Emergency Response (WH-562A)

List of Subjects in 40 CFR Part 30

Administrative practice and procedure, Grant programs—environmental protection, Inventions and patents, Copyright, Reporting and recordkeeping requirements.

Memorandum

To: William N. Hedeman, Jr., Director, Office of Emergency and Remedial Response (WH-548)

From: Harvey Pippen, Jr., Director, Grants Administration Division (PM-216)

Subject: Class Deviation from 40 CFR 30.720(a)

This responds to your January 21, 1983, request for a class deviation from 40 CFR 30.72(a) of the general grant regulations for Section 3012 of the Resource Conservation and Recovery Act (RCRA). Section 30.720(a) requires EPA assistance recipients to share project costs; at a minimum, recipients must contribute five percent of allowable project costs.

Section 3012 of the Resource Conservation and Recovery Act provides for State programs to develop inventories of hazardous waste and disposal sites. Congress appropriated $10,000,000 from the Hazardous Substance Response Trust Fund, established under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), to carry out Section 3012. This one-time appropriation will be used to assist States in completing the site assessment and inspection process already begun under CERCLA.

EPA believes there are several reasons for not requiring grantees to share the cost of this program. First, preliminary assessments and site inspections, which will be given priority under this program, presently are not subject to cost-sharing requirements under CERCLA. Second, requiring cost sharing would delay the implementation of program activities until States could provide funds to meet their share. It also would delay meeting EPA's goals for carrying out preliminary assessments and site inspections. Finally, requiring cost sharing under section 3012 might, because of limited resources, make it difficult for States to meet their cost-sharing obligations under other CERCLA projects.

Therefore, I approve a class deviation from 40 CFR 30.720(a) for assistance awarded under Section 3012 of RCRA for this one-time appropriation of $10,000,000. This deviation waives the cost-sharing requirement in EPA's general grant regulations (40 CFR 30) for this program.

Dated: February 16, 1983.

Concur:

John P. Horton,

Assistant Administrator for Administration (PM-208).

Dated: February 14, 1983.

Concur:

Michael A. Brown,

Acting Assistant Administrator for Solid Waste and Emergency Response (WH-562A).

[FR Doc. 83-5657 Filed 3-7-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[A-5-FRL 2307-6]

Approval and Promulgation of Implementation Plans: Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of final rulemaking.

SUMMARY: On October 25, 1982 (47 FR 47245), EPA announced final approval of Consent Order APC No. 02-1980, for the Hayes-Albion Corporation and of Permits 341-79 and 375-79 for the American Colloid Plant, as revisions to the Michigan State Implementation Plan (SIP) for Calhoun County. EPA subsequently received a request for an opportunity to submit adverse or critical comments on this approval. Accordingly EPA is today withdrawing its approval of this revision.

EFFECTIVE DATE: This final rulemaking is effective March 8, 1983.

ADDRESSES: Copies of the SIP revision are available for inspection at the following addresses:

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

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

Environmental Protection Agency, Air Programs Branch, Region V, 230 South Dearborn Street, Chicago, Illinois 60604;
Michigan Department of Natural Resources, Air Quality Division, State Secondary Government Complex, General Office Building, 7150 Harris Drive, Lansing, Michigan 48917.

FOR FURTHER INFORMATION CONTACT: Toni Lesser at (312) 886-6037.

SUPPLEMENTARY INFORMATION: On April 25, 1982, the State of Michigan submitted to EPA: Consent Order APC No. 02-1980 for the Hayes-Albion Corporation, along with alterations to Section 5(D) of the Consent Order; and Permits 341-79 and 375-79 for the American Colloid Plant, as revisions to the Michigan SIP. On June 18, 1982, the State of Michigan submitted a Fugitive Dust Control Plan and a Malfunction Abatement Plan for major air cleaning devices at Hayes-Albion as part of its SIP revision. These plans contain specific measures for reducing total suspended particulate (TSP) emissions. The Hayes-Albion foundry is located in Calhoun County. A one-square-mile area of Calhoun County on the west side of Albion City, around Hayes-Albion (Calhoun County, R4W, T2S, Section 34), has been designated as nonattainment for the primary TSP standards.

On October 25, 1982, (47 FR 47245), EPA announced the availability of this revision and its approval. The reader is referred to 47 FR 47245 for further information about the revision. In the approval notice of October 25, 1982, EPA advised the public that it was deferring the effective date of its approval for 60 days, until December 27, 1982, to provide an opportunity for the public to submit comments on the revision. EPA also announced that, if within 30 days of the publication of the notice of approval we received notice that someone wanted to submit an adverse or critical comment, we would withdraw the approval and begin a new rule by proposing action and establishing a 30-day comment period.

EPA has received notice that a member of the public wants to submit an adverse or critical comment on the revision pertaining to the Hayes-Albion Corporation. Therefore, in accordance with the procedure described above, EPA is today withdrawing its October 25, 1982 approval of Consent Order APC No. 02-1980 for the Hayes-Albion Corporation and Permits 341-79 and 375-79 for the American Colloid Plant. Elsewhere in today's **Federal Register**, EPA is reproposing to approve Consent Order APC No. 02-1980, for the Hayes-Albion Corporation and Permits 341-79 and 375-79 for the American Colloid Plant as revisions to the Michigan SIP and establishing a 30-day comment period on its proposed approval.

EPA is withdrawing this action without providing prior notice or opportunity to comment. EPA finds that it has good cause within the meaning of 5 U.S.C. 553(b) to proceed without notice and comment. Notice and comment would be impracticable because EPA needs to withdraw its approval as quickly as possible in order to consider the comments which members of the public want to submit. Moreover, further notice is not necessary because EPA has already informed the public that it would follow this procedure if it received a request for an opportunity to comment. (See 46 FR 41051 and 46 FR 44477.) For the same reason, EPA finds it has good cause under 5 U.S.C. 553(b) to make this withdrawal immediately effective.

Under Executive Order 12291, today's action is not "Major." The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

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

This notice is issued under authority of sections 110 and 172 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7502).

Dated: February 25, 1983.

Anne M. Burford,

Administrator.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart X-Michigan

§ 52.1170 [Amended]

1. Section 52.1170 is amended by removing paragraph (c)(60).

[FR Doc.83-5800 Filed 3-7-83 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP OF 2338/R 514; PH-FRL 2286-4]

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

Correction

In FR Doc 83-2991, beginning on page 5920 in the issue of Wednesday, February 9, 1983, in the middle column, five lines from the end of the paragraph, insert the word "no" between the words "with" and "NOEL".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6361

[M 41528]

Montana; Revocation of Stock Driveway Withdrawal No. 142, Montana No. 6

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial order which withdrew public lands for use as a stock driveway. This action will restore 158.24 acres to operation of the public land laws generally.

EFFECTIVE DATE: April 13, 1983.

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

SUPPLEMENTARY INFORMATION:

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

1. Secretarial Order dated August 12, 1940, which withdrew the following described lands for a stock driveway is hereby revoked:

Principal Meridian

T. 14 S., R. 6 W.,
sec. 30, lots 3, 4 and E½SW¼.

The area described contains 158.24 acres in Beaverhead County.

2. At 8 a.m. on April 13 1983, the lands shall be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8 a.m. on April 13, 1983, shall be considered as

simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

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

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

February 22, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-5873 Filed 3-7-83; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations; Arizona et al.

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are listed below for selected locations in the nation

These base (100-year) flood elevations are the basis for the flood plain management measures that the community is required either to adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM), showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated in the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Acting Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determination of flood elevation for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR Part 67). An opportunity for the community or individuals to appeal this determination to or through the community for a period of ninety (90) days has been provided, and the Agency has resolved the appeals presented by the community.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 USC 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the (final) flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the flood plain area. The elevation determinations, however, impose no restriction unless and until the local community voluntarily adopts flood plain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the flood plain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

The final base (100-year) flood elevations for selected locations are:

FINAL BASE (100-YEAR) FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Arizona	Pima County (Unincorporated Areas), FEMA-6254.	Santa Cruz River	120 feet upstream of the intersection of Avra Valley Road and Santa Cruz River.	*2,065
			130 feet downstream of the intersection of Sunset Road and Santa Cruz River.	*2,213
		Santa Cruz River—With Consideration of Levee.	75 feet downstream of the intersection of the Southern Pacific Railroad spur bridge and Santa Cruz River.	*2,714
		Santa Cruz River—Without Consideration of Levee.	Intersection of Sahuarita Road and Southern Pacific Railroad.	*2,704
		Santa Cruz River	80 feet upstream of the intersection of Continental Road and Santa Cruz River.	*2,854
			Center of U.S.Highway 89 (State Highway 93), 150 feet north of its intersection with Pima Mine Road.	#3
		Santa Cruz River West Overflow Channel.	125 feet downstream of the intersection of Continental Road and Santa Cruz River West Overflow Channel.	*2,854
		Los Robles Wash	150 feet upstream of the intersection of Trico Road and Los Robles Wash.	*1,929
			Center of Avra Road, 1000 feet north of its intersection with Avra Valley Road.	#3
		West Branch Brawley Wash	110 feet downstream of the intersection of Avra Valley Road and West Branch Brawley Wash.	*1,991
		Blanco Wash	Intersection of Chinle Road and Chinle Lane	*1,918
			Center of Tucker Road, 4,200 feet west of its intersection with Anway Road.	#2
		Brawley Wash	Intersection of Manville Road and Reservation Road	#1
		Black Wash	Center of Snyder Hill Road, 2.5 miles east of its intersection with Sandario Road.	#2
		Rillito Creek	Intersection of La Cholla Boulevard and Rillito Creek	*2,256
			25 feet downstream of the intersection of Dodge Boulevard and Rillito Creek.	*2,382
		Rillito Creek North Overbank Diversion.	Approximately 550 feet upstream of its confluence with Rillito Creek.	*2,347

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Pantano Wash—With Consideration of Levee.	50 feet north of the intersection of North Craycroft Road and Pantano Wash.	*2,435
		Pantano Wash—Without Consideration of Levee.	Center of North Craycroft Road, 1,250 feet north of its intersection with Fort Lowell Road.	*2,434
		Pantano Wash	Intersection of Golf Links Road and Camino Seco	*2,667
		Canada del Oro	Intersection of Magee Road and Shannon Road	*2,301
			25 feet upstream of the intersection of U.S.Highway 89 (Tucson-Florence Highway) and Canada del Oro.	*2,639
			Intersection of Rollins Road and Lago del Oro Parkway.	*2,926
		Tanque Verde Creek	100 feet upstream of the intersectign of Sabino Canyon Road and Tanque Verde Creek.	*2,478
			Center of Barbary Coast Road, 150 feet east of its intersection with Soldier Terrace.	*2,624
		Sopori Wash	Intersection of Arivaca Road and Sopori Ranch Road	*3,197
		Sopori Wash Overflow	Center of U.S.Highway 89, 350 feet south of its intersection with Arivaca Road.	*3,069
		West Branch Santa Cruz River	Center of Valencia Road, 3500 feet east of its intersection with Mission Road.	#1
		East Branch Brawley Wash	Intersection of Clayton Road and Twin Peaks Road	#1
		Big Wash	75 feet downstream of the intersection of Wilds Road and Big Wash.	*2,970
		Rincon Creek—With Consideration of Levee.	Center of Old Spanish Trail, 1,500 feet west of its intersection with Camino del Garanon.	*2,902
		Rincon Creek—Without Consideration of Levee.	North side of the levee, 2,100 feet upstream along Rincon Creek from its intersection with Old Spanish Trail.	*2,894
		Rincon Creek	50 feet upstream of the intersection of Camino Loma Alta and Rincon Creek.	*2,987
		Sabino Creek	200 feet east of the intersection of Snyder Road and Hidden Valley Road.	*2,594
		Agua Caliente Wash	Intersection of Fort Lowell Road and Connestoga Avenue.	*2,643
		Julian Wash	25 feet upstream of the intersection of Alvernon Way and Julian Wash.	*2,603
			Intersection of McKinley Avenue and Dream Street	#1
		Airport Wash	50 feet downstream of the intersection of the Air National Guard Access Road and Airport Wash.	*2,548
		Ventana Canyon Wash	130 feet upstream of the intersection of River Road and Ventana Canyon Wash.	*2,506
		Pima Wash	Intersection of Orange Grove Road and Pima Wash	*2,483
		Gibson Arroyo	Intersection of Arroyo Avenue and Palm Street	*1,749
Maps available for inspection at Planning and Zoning Department, 131 West Congress, Tucson, Arizona.				
Massachusetts	Bedford, Town Middlesex County (Docket No. FEMA-6128).	Concord River	Downstream Corporate Limits	*12
			Upstream Corporate Limits	*12
		Shawsheen River	Downstream Corporate Limits	*96
			Upstream side of George Walsh Highway (U. S. Route 3) Southbound.	*10
			Great Road (Upstream side)	*11
			Summer Street (Upstream side)	*11
			Hanscom Airfield Access Road (Upstream side)	*11
		Elm Brook	Confluence with Shawsheen River	*11
			South Road (Upstream side)	*11
			Upstream Corporate Limits	*12
		Spring Brook	Confluence in Shawsheen River	*10
			Abandoned Bridge (Upstream side)	*11
			Upstream side of Alcott Street	*12
			Approximately 2.1 miles upstream of confluence with Shawsheen River.	*13
		Mongo Brook	Confluence with Elm Brook	*11
			Fern Way (Upstream side)	*11
		Tributary to Mill Brook	Confluence with Mill Brook	*12
			Upstream Sweetwater Avenue	*15
Maps available for inspection at the Town Clerk's Office, Town Hall, 16 South Street, Bedford, Massachusetts.				
Massachusetts	Dartmouth, Town Bristol County (Docket No. FEMA-5843.	Buzzards Bay	Entire shoreline within Town	*13
			Slocums River	*13
			Apponagansett Bay	*13
		Paskamansett River	Approximately 3,400 feet downstream of Access Road	*34
			Upstream U. S. Route 6	*44
			Upstream Mill Dam	*50
			Approximately 750 feet upstream of Mill Dam	*50
		Buttonwood Brook	Confluence with Apponagansett Bay	*13
			Approximately 750 feet upstream of Elm Street	*23
			Confluence of Buttonwood Brook west	*38
			Upstream Milton Street	*54
			Upstream Sharp Street	*71
			Upstream Allen Street	*82
			Gaywood Street (extended)	*95
			Approximately 100 feet downstream of Lexington Avenue.	*103
		East Buttonwood Brook	Confluence with Buttonwood Brook	*38
			Arnold Street (extended)	*58
			Upstream Sharp Street	*71

FINAL BASE (100-YEAR) FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		West Buttonwood Brook	Confluence with Buttonwood Brook	*40
			Cypress Drive	*82
			Upstream Slocum Road	*80
			Standish Drive (extended)	*86
			Approximately 800 feet downstream of Allen Street	*105
			Downstream Allen Street	*117

Maps available for inspection at the Dartmouth Town Clerk's Office, South Dartmouth, Massachusetts.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: February 7, 1983.

Lee M. Thomas,

Associate Director, State and Local Programs and Support.

[FR Doc. 83-5535 Filed 3-7-83; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 360

State Assistance Program for Training and Education in Comprehensive Emergency Management

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This regulation deletes a provision which states that the program envisions after fiscal year 1981 a sharing of eligible costs between FEMA and the States. This will make the regulations consistent with the current Federal budget.

DATE: March 8, 1983.

FOR FURTHER INFORMATION CONTACT: Dr. Charles N. Turner, Acting Chief, Academic Support and Operations, Telephone Number: (301) 447–6771.

SUPPLEMENTARY INFORMATION: The regulation governing the State assistance program for training and education has a provision which states that for fiscal year 1981 only FEMA funding for this activity would be at 100% of allowable costs and that in future years it was envisioned that there would be cost sharing between the Federal Government and the States. It has now been determined that FEMA will reimburse State and local participants in FEMA field training activities funded under the Comprehensive Cooperative Agreement at the 100% level. As this regulation relieves a restriction, it can be made effective immediately. Also, for the same reason, notice and public comment are considered unnecessary. The rule applies only to States and thus no regulatory flexibility analysis is required. This is also not a major regulation.

List of Subjects in 44 CFR Part 360

Grant programs—education.

PART 360—[AMENDED]

Accordingly, 44 CFR 360.2(e) is amended by numbering the first paragraph as paragraph (1) and by revising the last paragraph to read as follows:

360.2 Description of program.

* * * * *

(e) * * *

(2) Allowable cost will be funded at 100%.

Dated: February 23, 1983.

Fred J. Villella,

Associate Director.

[FR Doc. 83-5803 Filed 3-7-83; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

46 CFR Part 536

[General Order 13, Amendment No. 10; Docket No. 80–56]

Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Commission is providing for 24-hour receipt of permanent tariff filings, including the use of electronic filing methods, in lieu of accepting temporary tariff filings. This will eliminate what has become an unnecessary burden on the Commission's staff and resources and will also simplify the use of foreign commerce tariffs by shippers, carriers and other interested persons. Providing for the receipt of permanent tariff filings on an around-the-clock basis, including those filed by electronic modes, should benefit carriers, conferences and shippers by enabling them to meet commercial exigencies.

DATE: Effective May 30, 1983.

FOR FURTHER INFORMATION CONTACT: James A. Warner, Chief, Office of Foreign Tariffs, Federal Maritime Commission, 1100 L Street NW., Room 10213, Washington, D.C. 20573, (202) 523–5827.

SUPPLEMENTARY INFORMATION: On September 3, 1981, the Commission stayed its Final Rule in this proceeding (46 FR 44190). That rule would have precluded the filing of temporary amendments to tariffs published by carriers or conferences of carriers in the foreign commerce of the United States, effective September 8, 1981 (46 FR 35092). The stay was requested by various conferences which sought an additional period for commenting on the rationale employed by the Commission in arriving at this decision.

By notice served December 28, 1981, the Commission granted interested parties an opportunity to comment on the basis for its rule (46 FR 62669). This notice also proposed a new procedure which would permit the receipt of permanent tariff amendments before and after the Commission's normal business hours, including weekends and holidays.

Comments were received from fourteen commentators on behalf of twenty-three conferences, two ocean carriers, three shippers and four tariff

publishing services. Seven of the commenting conferences support the Commission's proposed discontinuance of the temporary tariff filing privilege,[1] while fifteen conferences object to it.[2]

Other commenting parties support the Commission's proposal, but request that it be expanded to allow the permanent filing of tariff pages by electronic modes, on a 24-hour basis.[3] This suggestion has merit and has been adopted. Also a definition of electronic tariff filing is added to the Commission's tariff filing regulations to recognize such filings as a type of permanent tariff filing. The Commission will receive tariff material 24 hours a day. Material submitted after normal working hours will be stamped in a mail drop in the lobby of the Commission's Washington, D.C. office. The procedure for the receipt of electronic tariff filings will be through the use of a date/time device on receiving machines which are presently, or may in the future be, located in the Commission's public file facilities.[4]

Certain commenting parties request that the Commission expand the rulemaking proceeding to permit the 24-hour filing privilege for tariffs which are filed in the domestic offshore commerce under the requirements of the Commission's General Order 38.[5] Such a request is beyond the scope of this proceeding, which relates only to tariffs filed in the foreign commerce of the United States.

The Commission has also been urged to: (1) Continue the telex filing privilege without restriction; (2) allow foreign based filers continued use of telexes, with or without a limit on the number of such messages; (3) provide further justification before eliminating the temporary tariff filing privilege; (4) provide for the use of temporary filings when filed with sequential numbers; (5) assess a fee for the use of temporary tariff filings; (6) allow tariffs to be filed in the Commission's field offices; and (7) pursue legislative modifications to the Shipping Act to permit filings to be made within a certain period after contracts of affreightment are concluded.[6] Some of these comments [7] have already been considered during the course of this rulemaking proceeding while others are inconsistent with the intent of this rulemaking and therefore merit no further consideration.

The decision to eliminate temporary tariff filings may be inconvenient to some. However, there are means by which tariff changes considered time sensitive can be transmitted to the Commission for immediate effectiveness. Present tariff filing regulations already contain specific language to permit telephonic special permission applications where "emergency situations" appear to exist (*See* 46 CFR 536.15(c)). Further, carriers and conferences can still request a waiver of the Commission's permanent tariff page filing requirements if good cause can be shown.

The provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply to this Final Rule. The Commission's prior certification that the rule, if implemented, would not have any significant economic impact on a substantial number of small entities was made to the Chief Counsel for Advocacy of the Small Business Administration on January 20, 1982 and published in the **Federal Register** on January 28, 1982.

List of Subjects in 46 CFR Part 536

Maritime carriers, Reporting and recordkeeping requirements.

Therefore, it is ordered, That pursuant to 5 U.S.C. 553, and sections 18(b), 22 and 43 of the Shipping Act, 1916 (46 U.S.C. 817(b), 821 and 841(a)), 46 CFR Part 536 is amended as follows:

§ 536.2 [Amended]

1. A new paragraph (q) is added to § 536.2 which read as follows:

§ 536.2 Definitions.

* * * * *

(q) *Tariff filing, Electronic.*

The transmission of tariff filings to the Commission through the use of commercial data processing terminals. The data processing receiving terminal(s) are to be located in the Commission's Washington, D.C. offices. Tariff material filed electronically must conform to all the regulations applicable to permanent tariff filings, except as follows:

(1) electronically filed tariff pages received from data processing terminals may be used for filing with the Commission; and

(2) electronically filed tariff matter shall be accompanied by an electronically filed letter of transmittal; and

§ 536.3 [Amended]

2. Paragraph (a) of § 536.3 is redesignated as Paragraph (a)(1); and a new paragraph (a)(2) is added to § 536.3 which reads as follows:

§ 536.3 Filing of tariffs; general.

(a) * * *

(2) Receipt of Tariffs—The Commission will receive tariff filings on an around-the-clock basis. Receipt of tariff filings during other than normal business hours will be time stamped at a tariff mail drop in the lobby of the Commission's Washington, D.C. offices. Electronic tariff filings transmitted to the Commission by electronic modes will be receipted by a date/time device on the receiving machine; and

§ 536.10 [Amended]

3. Paragraph (c) of § 536.10 is deleted; and

It is further ordered, that the stay previously issued in this proceeding on September 3, 1981, is hereby rescinded.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 83-5802 Filed 3-7-83; 8:45 am]

BILLING CODE 6730-01-M

[1] North Atlantic United Kingdom Freight Conference; North Atlantic French Atlantic Freight Conference; North Atlantic Continental Freight Conference; North Atlantic Baltic Freight Conference; Scandinavia Baltic/U.S. North Atlantic Westbound Freight Conference; Continental North Atlantic Westbound Freight Conference; and North Atlantic Westbound Freight Association.

[2] North Europe-United States Pacific Coast Freight Conference; Sections B and C of the Pacific Coast River Plate Brazil Conference; The "8900" Lines, Greek/U.S. Atlantic Agreement, Iberian/U.S. North Atlantic Westbound Freight Conference, Italy, South France, South Spain, Portugal/U.S. Gulf and Island of Puerto Rico Conference; Marseilles North Atlantic U.S.A. Freight Conference; Mediterranean-North Pacific Coast Freight Conference; North Atlantic Mediterranean Freight Conference; U.S. Atlantic & Gulf/Australia-New Zealand Conference; The West Coast of Italy, Sicilian and Adriatic Ports North Atlantic Range Conference; Trans-Pacific Freight Conference of Japan/Korea; Japan/Korea-Atlantic and Gulf Freight Conference; Thailand/Pacific Freight Conference; and Thailand/U.S. Atlantic and Gulf Conference.

[3] Pacific Westbound Conference; Sea-Land Service, Inc.; and Pacific Coast Tariff Bureau.

[4] An acceptable tariff filing made by an electronic mode is any tariff amendment which has all the characteristics of a permanent tariff amendment. The basic difference between an electronic mode tariff filing and a mail or hand delivered permanent filing is the method of transmission. In other words, electronic filing is electronic mail. The equipment used to compile, send, and/or receive electronic tariff filings is commercially controlled by the tariff filers, with the Commission providing the space for the receiving (printer) machines.

[5] Sea-Land Service, Inc.; Crowley Maritime Corporation; International Tariff Services, Inc.; Pacific Coast Tariff Bureau; and Jim Pitzer, Transportation Consultant.

[6] C. H. Dexter Division, the Dexter Corporation; Air Products and Chemicals, Inc.; World Tariff Services, Inc.; North Europe/U.S. Pacific Freight Conference, except Sea-Land Service, Inc.; Sections B and C of the Pacific Coast River Plate Brazil Conference; Trans-Pacific Freight Conference of Japan/Korea, *et al.*; The "8900" Lines, except Sea-Land Service, Inc.; Waterman Steamship Corp.; and E. I. du Pont de Nemours and Company.

[7] *See* 45 FR 58385, September 3, 1980.

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 311 (Sub-No. 4)]

Modification of the Motor Carrier Fuel Surcharge Program

AGENCY: Interstate Commerce Commission.

ACTION: Change in owner-operator fuel reimbursement figure.

SUMMARY: Due to a change in the nationwide average cost of diesel fuel, owner-operator reimbursement has changed from 11.5 to 11 cents per mile.

EFFECTIVE DATE: This decision will be effective on March 22, 1983.

FOR FURTHER INFORMATION CONTACT:

Lee Alexander (202) 275–7723
Ted Kalick (202) 275–6446
Alan Rothenberg (202) 275–7597
Boston, MA (603) 223–2372
Philadelphia, PA (215) 597–4460
Atlanta, GA (404) 881–2167
Chicago, IL (312) 353–6204
Ft. Worth, TX (817) 334–2794
San Francisco, CA (415) 974–7125

SUPPLEMENTARY INFORMATION:

In a decision served February 22, 1983 (48 FR 8152, February 25, 1983), the Commission established owner-operator reimbursement at 11.5 cents per mile for all carrier-related business miles. This change will become effective March 11, 1983. As noted in the October 8, 1981 decision (46 FR 50070, October 9, 1981), the mileage payment will change when the price of fuel in conjunction with the reimbursement formula causes the figure to rise or decline by .5 cents per mile.

As of February 28, 1983, the current price of diesel fuel was 114.4 cents per gallon. The reimbursement figure is 10.8. Ten working days after publication of the notice in the **Federal Register** (effective March 22, 1983), carriers shall reimburse owner-operators at a minimum of 11 cents per mile.

During this 10-day period or after, if they choose, carriers may adjust their rates to reflect the change in owner-operator reimbursement by using the 10-day notice provisions of Special Permission No. 81–2500 (see Part 2 of Appendix B and Appendix C to the October 8 decision). All other normal rate-making avenues are also available.

Notice shall be given to the general public by mailing a copy of this decision to the Governor of each State having jurisdiction over transportation by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection and by depositing a copy with the Director, Office of the Federal Register, for publication.

Decided: February 28, 1983.

By the Commission, Heber P. Hardy, Director.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83–5813 Filed 3–7–83; 8:45 am]

BILLING CODE 7035–01–M

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49 CFR Parts 1039, 1300, and 1301

[Ex Parte No. 346 (Sub-No. 3)]

Rail General Exemption Authority—Long and Short Haul Transportation

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: In light of the expanded exemption authority contained in the Staggers Rail Act of 1980, the Commission is: (1) Exempting all rail rates and charges from the need for prior Commission approval when departing from the restrictions of 49 U.S.C. 10726; (2) overruling case law holding that a violation of section 10726 is *prima facie* evidence of unreasonableness; and (3) eliminating regulations no longer required as a result of the exemption.

EFFECTIVE DATE: April 7, 1983.

FOR FURTHER INFORMATION CONTACT: Martin E. Foley, (202) 275–7348.

SUPPLEMENTARY INFORMATION:

This proceeding began with a Notice of Proposed Rulemaking published October 29, 1979 (44 FR 61981) in which the Commission sought comment on a proposal to exempt certain categories of rail rates and charges from section 10726 of the Interstate Commerce Act. Section 10726 prohibits rail carriers, unless they obtain prior Commission approval, from charging a higher rate for:

(a) A shorter distance than for a longer distance over the same route in the same direction (where the longer route includes the shorter) or

(b) A through rate than for the sum of the intermediate rates.[1]

[1] The Commission may grant relief from the requirements of this section in "special cases", often called "Fourth Section" cases since the provisions of section 10926 of the Act were, prior to its recodification, found in section 4. Relief is now granted to allow carriers to meet inter- and intramodal competition, to allow for different cost associated with different types of service, and to remedy technical situations (such as group rates to or from all points in a given area).

The October 29, 1979 proposal was limited to nine categories of rail rates. After comments were received in response to that notice, but before the Commission could reach a decision, Congress enacted the Staggers Rail Act of 1980 (Staggers Act) which not only amended section 10726, but also revised and expanded the Commission's exemption authority under 49 U.S.C. 10505.

In light of those statutory changes, the Commission issued a Second Notice of Proposed Rulemaking (second notice) on December 18, 1980 (45 FR 83380) proposing a broader exemption than that in the original notice. The second notice proposed to: (1) Exempt all rates that depart from the restrictions of section 10726 from pre-justification requirements and from the investigation and suspension procedures of section 10707; (2) overrule case law holding that a violation of section 10726 is *prima facie* evidence that a rate is unreasonable; and (3) eliminate the regulations governing Commission approval of departures from section 10726.

Additional information is contained in the Commission's full decision. For a copy of the decision write to: TS Infosystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (D.C. Metropolitan area) or toll free (800) 424–5043.

List of Subjects

49 CFR Part 1039

Administrative practice and procedure, Agricultural commodities, Intermodal transportation, Railroads.

49 CFR Part 1300

Freight, Maritime carriers, Pipelines, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 1301

Freight, Railroads.

Dated: February 22, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

Appendix

PART 1039—[AMENDED]

Chapter X of Title 49 of the Code of Federal Regulations is amended as follows:

1. § 1039.12 is added to read as follows:

§ 1039.12 Long and short haul transportation exemption.

(a) All rates and charges for rail transportation are exempt from the provisions of 49 U.S.C. 10726 to the extent that:

(1) Commission approval or consideration before the effective date of these rates and charges is not required; and

(2) Section 10707 will not apply to rates to the extent that they are challenged on the basis of alleged violations of Section 10726.

(b) This exemption does not extend to review by the Commission upon the filing of a formal complaint alleging a violation of section 10726. Commission review will, however, be subject to the following conditions:

(1) A showing that a rate violates section 10726 will not create a presumption that the higher rate is unreasonably high, and

(2) A finding by the Commission that a rate or charge violates the provisions of section 10726 will not, absent a specific showing of damages, afford a basis for an award of reparations.

PART 1300—[AMENDED]

§§ 1300.28, 1300.56, 1300.65, and 1300.200 [Removed]

2. 49 CFR 1300.28, 1300.65, and 1300.200 are removed.

PART 1301—[REMOVED]

3. 49 CFR Part 1301 is removed.

(5 U.S.C. 553; 49 U.S.C. 10505)

[FR Doc. 83-5896 Filed 3-7-83; 8:45 am]

BILLING CODE 7035-01-M

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49 CFR Part 1151

[Ex Parte No. 395 (Sub-1)]

Feeder Railroad Development Program

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.[1]

SUMMARY: The Commission is modifying its regulations governing the feeder railroad development program. This program was created to enable shippers and communities to acquire rail lines prior to downgrading or abandonment. These revisions are adopted to remedy problems which have arisen with the existing regulations and to streamline and clarify our application procedures. Generally, the new rules: (1) Eliminate the existing preapplication notice requirements; (2) make various procedural changes designed to accelerate consideration of feeder line applications; and (3) allow for the submission of competing applications for the acquisition of the same feeder line. This decision also discusses Commission policy toward related feeder line and abandonment applications.

EFFECTIVE DATE: These rules are effective on April 7, 1983.

FOR FURTHER INFORMATION CONTACT:
Louis E. Gitomer, (202) 275-7245
Wayne A. Michel, (202) 275-7657
or
Karen A. Osterloh, (202) 275-7483.

SUPPLEMENTARY INFORMATION: By notice of proposed rulemaking (NPR) served August 3, 1982, and published in 47 FR 33993 (August 5, 1982), we instituted this proceeding proposing to modify our regulations governing the feeder railroad development program. Comments have been received from several parties. Upon analysis of these comments, we have modified the proposed rules. A summary of the modifications to the proposed rules are contained in Appendix A. The text of the final rules is contained in Appendix B. Although all comments are not specifically discussed in this decision they have been considered in developing the final rules.

Discussion

Our discussion of the comments is divided into seven sections. The first six sections deal with the following major topics: (I) Preapplication notice requirements; (II) the relationship between feeder line applications and abandonment applications involving the same line; (III) competing feeder line applications; ((IV) procedural schedules; (V) public notice provisions; and (VI) purchase price determinations. The final section addresses several minor matters.

I. *Preapplication Notice.*—The most significant change contained in our proposed rules is the elimination of the 90-day preapplication notice of intent to file a feeder line application. We proposed to eliminate this requirement to avoid situations similar to those in Docket No. AB-43 (Sub-No. 65F), *Illinois Central Gulf Railroad Company—Abandonment—Between Cisco and Green's Switch in Mason and Piatt Counties, IL,* and Finance Docket No. 29813, *Cisco Cooperative Grain Company—Feeder Line Acquisition—Illinois Central Gulf Railroad Company Line Between Cisco and Green's Switch, IL* (not printed), served May 10, 1982, aff'd by decision served July 19, 1982 *(Cisco).* In *Cisco,* a party filed a notice of intent of file a feeder line application. However, prior to the termination of the 90-day notice period, the owning carrier filed an abandonment application. The Commission dismissed the feeder notice and found: (1) That the filing of a feeder line notice was insufficient to trigger jurisdiction under 49 U.S.C. 10910; and (2) that feeder line jurisdiction could not be invoked after filing of the abandonment application.[2] Thus, one effect of the notice requirement was to frustrate the feeder line program because owning railroads had a method of circumventing its provisions.

While the majority of the parties' comments favor the elimination of the notice requirements, several parties support the retention of a notice period, either 90 days or a shorter 20 to 30-day notice period. These parties argue that a notice period is necessary to assure adequate public notice and to encourage voluntary negotiations between the parties. As discussed in Sections IV and V, the proposed public notice requirements are adequate to preserve the rights of all necessary parties. While the notice period could possibly encourage some voluntary negotiations between the parties, the same goals may be pursued through negotiations without the filing of the feeder line application. Moreover, voluntary negotiations may proceed regardless. Our experience with similar proceedings under 49 U.S.C. 10905 indicates that these voluntary negotiations are often fruitful when the deadline for Commission action nears.

In addition, there is a practical reason for the elimination of the preapplication notice period. Because we have decided that abandonment and feeder line proceedings must occasionally be conducted concurrently (see discussion below), the feeder line proceedings must be concluded *prior* to the final decision in the abandonment proceeding which is subject to statutory deadlines. If a notice period is added, it would become very

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[1] Our proposed rules referred to 49 CFR Part 1128. On November 1, 1982, the Commission issued Ex Parte No. 55 (Sub-No. 55), *Revision and Redesignation of the Rules of Practice.* This decision modified the section citation in 49 CFR Subtitle B, Chapter X, Subchapter B (the rules at 49 CFR 1100 *et seq.*). Because of this, the Feeder Line Development Program regulations are now located at 49 CFR Part 1151.

[2] This decision is on appeal to the United States Court of Appeals for the Seventh Circuit in No. 82-2288, *Cisco Cooperative Grain Company* v. *Interstate Commerce Commission.* United Transportation Union argues that this rulemaking proceeding is an unjustifiable interference with the court proceeding and that the court should be allowed to rule prior to the promulgation of these rules. We disagree. The Commission has a continuing duty to review and modify rules and regulations when faced with new developments or in light of reconsideration of the relevant facts. See *American Trucking* v. *Atchison, Topeka & Santa Fe Ry.,* 387 U.S. 397 (1967). The Commission is meeting that duty here.

difficult to process the feeder application prior to the deadline for reaching a decision in the abandonment case. Accordingly, our final rules contain no provisions for prefiling notices.[3]

II. *Relationship Between Feeder Line and Abandonment Applications.*—In the NPR we proposed the following policy for handling related abandonment and feeder line applications: (1) Any feeder line application involving all or any portion of a line which is the subject of an abandonment application filed prior to the feeder line application will be automatically rejected; and (2) feeder line applications and subsequently filed abandonment applications will be processed concurrently.

There is no substantial opposition to our policy to reject feeder applications filed *after* abandonment applications. Several parties, however, objected to the resolution of the problems raised when the feeder application is filed *before* the abandonment application. The parties have offered two alternative procedures for resolving this problem. Some parties argue that the consideration of the abandonment application must be delayed until after the feeder line application is fully processed. The Association of American Railroads (AAR), on the other hand, argues that the subsequent filing of an abandonment application requires the dismissal of an earlier filed feeder line application. Neither suggestion is acceptable.

There is no statutory authority or legislative history which would allow the postponement of the consideration of an abandonment application until a feeder line application is processed. Section 10904 prescribes very strict time limits for the processing of abandonment applications. There are no provisions for the tolling of these time limits or the suspension of the abandonment proceeding. Accordingly, we must reject the proposal to suspend abandonment proceedings during the pendency of the feeder line application.

We also cannot accept AAR's argument that an abandonment application filed after a feeder line application requires the dismissal of the feeder line application. Congress recently amended 49 U.S.C. 10910 in the Rail Safety and Service Improvement Act of 1982. Section 506(a) of the act amended 49 U.S.C. 10910(b)(1)(A)(ii) to provide that the Commission shall require a rail carrier to sell a line if, *inter alia*, the railroad line "* * * is on a system diagram map as required under section 10904 of this title, but the rail carrier owning such line has not filed an application to abandon such line under section 10903 and 10904 of this title before an application to purchase such line, or any required preliminary filing with respect to such application, is filed under this section * * *" This change was described as "a clarifying amendment designed to achieve an interpretation compatible with the Congressional intent in the previous legislation passed." 128 Cong. Rec. H5821 (daily ed. Aug. 12, 1982) (remarks of Rep. Florio). Thus, Congress has expressly indicated its intent that a feeder line application or notice can not be rejected merely on the basis of a subsequently filed abandonment application.

AAR objects to the simultaneous consideration of the two proceedings, arguing that: (1) The feeder line proceeding is unnecessary if an abandonment application is filed; and (2) the policy would encourage the abuse of Commission procedures. AAR argues that Commission's approach is unnecessary because a purchase pursuant to 49 U.S.C. 10905 may be made following a grant of the abandonment. It is true that under 49 U.S.C. 10905 the Commission can also order the sale of the line to a financially responsible person for fair market value. However, the feeder line provisions offer more benefits to the purchaser than 49 U.S.C. 10905. Under the feeder line statute, the Commission can require the selling carrier to provide the purchaser with *trackage rights* and *joint rates* and the buyer can elect to be *exempt* from the provisions of Title 49 (except joint rates provisions). None of these advantages are available under 49 U.S.C. 10905. Moreover, there is no likelihood of obtaining a lower purchase price under 49 U.S.C. 10905 than under the feeder program since the criteria used to set the price are the same. Under 49 U.S.C. 10910, the purchase price is set at the greater of net liquidation value (NLV) or going concern value (GCV), and under section 10905 the criterion is NLV absent a higher GCV. See *Chicago and North Western Transp. Co.-Abandonment*, 363 I.C.C. 956, 961 (1981); aff'd sub nom. *Chicago and North Western Transp. Co.* v. *United States*, 678 F.2d 665 (7th Cir. 1982). AAR also argues that our policy will encourage the use of "sham" feeder line applications intended merely to delay the abandonment proceeding. Under our proposed rules, an abandonment will be delayed if a feeder applicant files its application during the abandonment notice period (if the feeder applicant files a protest referring to its application). The "delay" results because a feeder applicant need only file a minimal protest to have the abandonment investigated.[4] Thus, the filing of a feeder application (and the protest) could result in a 90-day "delay", because a decision in a non-investigated proceeding is due within 75 days of filing while a decision in an investigated proceeding is due within 165 days of filing. 49 U.S.C. 10904(c)(1) and (3).

However we do not believe that our policy will result in the abuse predicted by AAR. A "sham" applicant will gain little advantage from the filing of a feeder line application. As noted, the potential for the delay of the abandonment proceeding is a maximum of 90 days when compared to the delay that could be achieved through the filing of a perfunctory protest. In addition, the feeder line application must contain all the detailed information required in our regulations or it will be rejected. In light of the substantial burdens of preparing a feeder line application and the limited benefit to be derived from the delay of the abandonment, we conclude that the potential for abuse of our investigation

[3] Due to recent Congressional action in the Rail Safety and Service Improvement Act of 1982, a subsequently filed abandonment application no longer requires the dismissal of the feeder line notice. See discussion, *infra*, at page 5. This legislation has thus eliminated the possibility that the *Cisco* situation could recur. However, because it is still necessary to observe the statutory deadlines in concurrently conducted abandonment applications and because the notice provisions will make it difficult to observe these deadlines, the notice provisions will be eliminated.

[4] Our notice also stated that if the feeder line application involved only a portion of the line involved in the related abandonment proceeding, we would bifurcate the abandonment application and only investigate the abandonment of the segment subject to the feeder line application. AAR argues that this policy would encourage the bifurcation of abandonment proceedings and would make it difficult for the railroads to present adequate cost evidence.

We will bifurcate the abandonment proceeding only when the segment of the line unaffected by the feeder line application is unopposed. While this may create some problems in preparing railroad costing evidence, this procedure is currently used where only a portion of line proposed for abandonment is opposed.

Moreover, bifurcation usually benefits the applicant-railroad by creating two proceedings. This procedure ensures that the rail carrier will be able to discontinue operating over the unopposed line segment at the earliest possible date. It also eliminates the possibility that abandonment of the unopposed line segment will be denied. Despite these benefits, there may be instances where the railroad is unable to apportion its cost evidence over the two segments. Accordingly, we will not order bifurcation of the abandonment proceeding over the specific objection of the applicant-railroad.

Finally, there may be instances where a feeder line application may involve a segment of line which would be completely isolated if the unopposed segment in the related application is allowed to be abandoned. In these situations, the abandonment proceeding will not be bifurcated.

procedures caused by this policy is minimal.

AAR also claims that our investigation policy is an abuse of our discretion under 49 U.S.C. 10904. Currently in making an investigation decision, we consider all relevant factors on a case by case basis. See *Abandonment of R. Lines & Discontinuance of Serv.*, 365 I.C.C. 249, 252 (1981) (*Abandonment Rulemaking*). However, the statute allows us the discretion to order an investigation when it "is needed to assist in determining what disposition to make of the abandonment proceeding." 49 U.S.C. 10904(c)(1). We find that the existence of a pending feeder application requires an investigation in all instances because the forced sale of the line *requires* a specific disposition of the abandonment proceeding, i.e. dismissal of the abandonment application. Our automatic investigation policy is thus neither arbitrary nor an abuse of our broad discretion.[5]

Finally, several parties also argue that the simultaneous consideration of two applications will overtax the parties' and the Commission's resources. While the simultaneous consideration of two proceedings may require a greater commitment of resources, this burden is not overwhelming. Thus, we will follow the policy regrading related applications, as explained above.

III. *Competing Applications*—We originally proposed the elimination of competing applications because we were concerned that the consideration of these applications might unduly broaden the issues or delay the timely issuance of a decision. Since there might be advantages in competing applications, however, we specifically requested comments on this issue.

The vast majority of comments favor retention of competing applications. Only the National Council of Farmer Cooperatives opposed competing applications, arguing that it was unlikely that the Commission would ever find more than one party willing to complete for the purchase of a line.

We will allow competing applications. While competing applications add complexity, all issues can be resolved within the revised procedural schedule discussed in Section IV.

The parties have made two additional suggestions involving competing applications. Several parties argue that we should establish a rule which provides that the Commission shall select which of the qualified competing applicants will be the purchaser. We will not adopt this rule. The Statute does not require us to make a selection. Moreover, in past proceedings, we have determined that the selection must be left to the selling railroad. See *Indiana Hi-Rail;* Compare 49 U.S.C. 10905(f)(3). Accordingly, where two or more financially qualified applicants are competing for the acquisition of the same line of railroad, we will require the selling railroad to select the purchaser. The owning carrier's selection will be required within 5 days after the applicants' acceptance of the Commission's decision.

Finally, one party argues that the rulers should provide that the information contained in a feeder line application should not be released until the deadline for competing applications is past. Although we can appreciate that applicants who have spent time and money preparing an application might be concerned that their work is being used by competitors, we will not enforce such a provision since it would limit the chances of a complete competing application being filed and because an application must be made available to the public.

IV. *Procedural schedule*—The same parties in opposition to the concurrent handling of feeder line and abandonment applications opposed the imposition of a fixed procedural schedule. Since we have determined that a decision on a feeder line application must be reached before the abandonment is decided, it is necessary to adopt a fixed schedule concluding the feeder line application within 155 days. While the statute does not require a fixed schedule, the Commission has been granted broad discretion to implement the feeder line program and to prescribe such regulations and procedures as may be necessary to carry out the provisions of this section. 49 U.S.C. 10910(k). Accordingly, a fixed schedule is appropriate.

The following schedule will be established:

Day 1—Primary application filed.
Day 30—Competing applications due.
Day 60—Comments to the primary and competing applications due.
Day 80—Replies from primary and competing applicants due.
Day 140—Commission decision.
Day 150—Applicants accept or reject the Commission decision.
Day 155—Railroad chooses purchaser if two or more applicants accept the Commission decision.

This schedule takes into account the views of the majority of the parties that a fixed schedule allowing for competing applications is advantageous. This schedule affords interested parties sufficient time to identify issues, develop and present relevant data, and allows the Commission sufficient time to exercise our duties in a responsible manner.

We have made an additional procedural change which is not reflected in this schedule. Our proposed regulations provided that we would issue a decision to accept or reject the feeder line application on the basis of form and content within 15 days of its receipt. Because it is unnecessary to issue a decision accepting feeder line applications, we have decided to issue preliminary decisions only when we reject applications. Our rules provide that a decision rejecting the initial application will be made within 15 days of receipt of the application. This will discontinue the proceeding at the earliest possible date and will enable opposing parties to avoid the preparation of unnecessary pleadings. Since the rejection of a competing application will not result in the discontinuance of the proceeding, we shall reserve the right to reject the competing application at any time including the date set for the final decision.

Office of Special Counsel (OSC) is concerned that our fixed schedule will not allow us to require additional oral or written testimony if the record does not contain sufficient evidence to permit a decision on the merits. OSC is correct that there may be rare instances where the issues in a proceeding are so complex that development of the record within the set time frames might be impossible. However, in those rare instances, we will take steps to assure the development of a complete record, but specific rules are not needed to address this situation.

V. *Public Notice.*—Because our proposed rules would eliminate the 90-day preapplication notice, it was necessary to prescribe another method of providing public notice of the feeder line application. Accordingly, our proposed rules would require the notification of certain designated parties by certified mail and the publication of a summary of the application in the **Federal Register.**

[5] The Commission's Office of Special Counsel (OSC) suggests that our abandonment regulations be formally revised to provide for the automatic investigation of abandonment applications upon the filing of feeder line applicant's protest. The inclusion of such a provision may be useful addition to our abandonment regulations. Our abandonment regulations are currently proposed for revision in Ex Parte No. 274 (Sub-No. 5), *Revision of Abandonment Regulations* (not printed), served October 5, 1981. We will incorporate OSC's recommendation in that proceeding.

The purpose of providing notice in a feeder line proceeding is to assure that affected persons are alerted to a possible change in the status of the line. We conclude that more efficient notice to the affected public may be provided by directly alerting individual parties rather than by publication in the **Federal Register**. Thus, we have expanded the list of parties upon whom an applicant must serve a copy of the application to include: (1) The owning railroad; (2) all rail patrons receiving or originating traffic on the line during the 12-month period preceding the month in which the application is filed; (3) the designated state agency as defined in 49 CFR 1151.2(g) [formerly 49 CFR 1121.11(g)]; (4) county governments in which the line is located; and (5) the Railway Labor Executives' Association.[6]

VI. *Acquisition Cost Determination.*—Our proposed rules would eliminate existing requirements governing the submission of NLV and GCV evidence [currently 490 CFR 1151.7(d)(1), formerly 1128.7(d)(1)].[7] One party opposes the elimination of the evidentiary requirements. We conclude it is inappropriate to delineate the type of evidence the parties should submit. The parties are free to present *any* evidence of GCV or NLV that they may deem persuasive. We will accord appropriate weight to the presentations.

Finally, the proposed rules would eliminate current 49 CFR 1151.7(a) [formerly 49 CFR 1128.7(a)] which provided, "If the applicant and the owning railroad agree between themselves on an acquisition price, that price shall be the final price and not subject to the requirements of this subpart." Funding System Railcars, Inc. objects to the deletion of this section. We did not mean to suggest that voluntary agreements would not be accepted. The public interest is best served by allowing the parties to enter into voluntary negotiations and by adopting those terms agreed to by the parties. Accordingly, this provision will be reinstated at 49 CFR 1151.4(c).

VII. *Miscellaneous Matters.*—The parties' comments have raised several additional miscellaneous matters involving: (1) Consolidated Rail Corporation (Conrail) lines; (2) affiliates of class I and II railroads as eligible feeder line applicants; (3) joint rates and divisions; (4) non-owning operators; (5) additional application requirements; and (6) termination of services.

Conrail.—The scope section of the proposed rules indicates that a rail line is eligible for forced sale if it appears in category 1 or 2 of the owning carrier's system diagram map (SDM) (but the railroad has not filed an application to abandon the line) or the public convenience and necessity (PC&N) require or permit the sale of the line.

Several parties state that Conrail has withdrawn its SDM and that it is impossible to determine which Conrail lines fall under category 1 or 2. They suggest that we inform all carriers, including Conrail, that a SDM must be filed. This issue was considered recently in Finance Docket No. 29901, *New York Department of Transportation—Petition for an Order to Show Cause* (not printed), served August 25, 1982. In that case, we found that section 1152 of the Northeast Rail Service Act of 1981, Pub. L. No. 97–35, August 13, 1981 (NERSA), exempted Conrail from certain provisions of 49 U.S.C. Chapter 109, including the requirement that all carriers must file a SDM. Accordingly, we will not impose the SDM requirement here.

The Ohio Rail Transportation Authority suggests that an alternate method be devised to identify category 1 and 2 Conrail lines (i.e. that a notice of insufficient revenues under NERSA be deemed to be a category 1 filing). Under 49 U.S.C. 10910(b)(1)(a)(ii), we are specifically required to find that a line has been placed on the SDM as required by section 10904. It is not within our power to substitute any other requirement for this statutorily mandated finding.

Although a prospective feeder line applicant may not acquire a Conrail line under section 10910(b)(A)(ii) so long as Conrail does not file a SDM, interested persons may still submit evidence under 49 U.S.C. 10910(b)(1)(A)(i) to demonstrate that the PC&N requires or permits the sale under the feeder line program.[8] In addition, if Conrail pursues a NERSA abandonment, the financial assistance provisions of 49 U.S.C. 10905(d)–(f) are available.

Affiliates of Class I and II Railroads.—The current regulations [49 CFR 1151.2 formerly 49 CFR 1128.2] and the proposed regulations provide that an affiliate of a class I or II railroad is not an eligible feeder line applicant. The New York Department of Transportation (NYDOT) argues that affiliates should be eligible applicants because they are not expressly excluded by statute.[9] We disagree. Congress enacted the feeder line program to provide shipper groups and government agencies with rail transportation alternatives. H.R. Rep. No. 96–1430, 96th Cong., 2nd Sess. at 124 (1980).

NYDOT argues that, under some circumstances, the only party willing to acquire the line may be an affiliate of a class I or II railroad. It argues that the exclusion of such affiliates may result in the termination of all rail service. Our regulations merely preclude the affiliate's use of the feeder line provisions. An affiliate may still negotiate a voluntary agreement or acquire a line after abandonment under 49 U.S.C. 10905. It is thus unlikely that the preclusion of affiliates will result in the termination of any rail service.

Joint Rates and Division.—In order to reduce the financial and traffic data necessary to support the feeder line application, the Illinois Rail Users Association (IRUA) suggests that applicants be permitted to exclude information in support of the establishment of joint rates and divisions. IRUA suggests that the parties be permitted to negotiate the joint rates and divisions and, if the negotiations fail, to institute a collateral proceeding.

The information requested under 49 CFR 1151.3(a)(14) is optional. An applicant need only submit this information if it wants the Commission to establish joint rates and divisions at the time a feeder line application is decided. It is possible for the Commission to entertain these issues in a collateral proceeding under 49 U.S.C. 10910(f).[10]

We have discovered an error in our original regulations concerning the Commission's joint rate and divisions determinations. [49 CFR 1151.6(c) formerly 49 CFR 1128.6(c)]. As originally drafted, this regulation did not include certain prerequisites to the consideration of joint rates and divisions issues. We have made

[6] The Ohio Public Utilities Commission suggested that the notice requirements be expanded to include the posting of notices at rail stations and publication in a local newspaper. We will not adopt this proposal. Posting at rail stations could involve trespass and newspaper publication could be very expensive. Moreover, as noted above, direct service is the most efficient means of notice.

[7] Several parties misinterpret our action as an abdication of our responsibility to set the purchase price in the absence of a voluntary agreement. We will continue to set the purchase price. See 49 CFR 1151.4(c).

[8] In at least one instance, Conrail has attempted to assist prospective purchasers seeking to use the PC&N provisions of the feeder line development program by filing an affidavit in support of their purchase request. See *Indiana Hi-Rail, supra.*

[9] While the existing rules already exclude affiliates as eligible applicants, the first feeder line rulemaking proceeding did not contain such an exclusion in the proposed rule and this provision was inserted into the final rule without any substantive discussion in our decision. Accordingly, we will address this issue in this proceeding.

[10] All other issues *will* be resolved in the *Commission's final decision.*

appropriate revisions to this regulation. See 49 CFR 1151.4(e).

Non-owning Operators.—AAR and UTU argue that the rules should eliminate any reference to a feeder line purchaser's ability to contract with a third party to provide operations over the line [49 CFR 1151.3(a)(7) formerly 49 CFR 1128.3(a)(7)]. They argue that the feeder line applicant must be the carrier and the operator of the line since the language of section 10910 provides that only "acquiring" or "purchasing" carriers can obtain trackage rights or joint rates.[11]

We shall retain the provisions allowing third party operations. No provision of the feeder line program expressly forbids properly authorized third party operations. While several of the beneficial provisions of the program may not be available to these operators, this does not warrant their exclusion. This conclusion conforms to Congress broad policy favoring alternatives to inadequate service through the feeder line program. We note that the parallel provisions governing financial assistance proceedings (49 U.S.C. 10905) also do not expressly provide for third party operations. Yet, the Commission has allowed such arrangements. See Docket No. AB-1 (Sub-No. 111), *Chicago and North Western Transportation Company—Abandonment in Oneida, Vilas, Iron, Ashland and Bayfield Counties, WI and Gogebic County, MI* (not printed), served October 9, 1981, and *Abandonment Rulemaking* at 259.[12]

Additional Acquisition Application Requirements.—One party requests that the Commission determine that all feeder line acquisitions fall within 49 U.S.C. 10901 rather than 49 U.S.C. 11343. It is not necessary to make this determination. The statutory provisions creating the feeder line program remove purchases under section 10910 from the provisions of section 10901 and 11343. No separate applications under these other sections are required. Compare *Abandonment Rulemaking* at 259–60.

Termination of Service.—One party argues that feeder line purchasers should have the right to terminate service and end their common carrier obligation in an uncomplicated manner. The party suggests that this could be accomplished by a certificate similar to a designated operator or modified PC&N certificate (See 49 CFR 1150.11 and 21 formerly 49 CFR 1120.11 and 1120.21).

The statute provides that a feeder line applicant must be able to assure that adequate transportation will be provided over the line for a period of not less than 3 years. 49 U.S.C. 10910(a)(1). We have construed this provision to require that applicants provide a minimum of 3 years of service. *Feeder Railroad Development Program,* 365 I.C.C. 93, 96 and 99 (1981). Accordingly, we will not provide any abbreviated termination procedures to feeder line owners during this period. Moreover, there is no reason to allow feeder line owners, as a class, more expeditious abandonment procedures than those described at 49 U.S.C. 10903 *et seq.* An individual feeder line applicant may, however, elect to be exempt from any of the provisions of Title 49 (except joint rates provisions). 49 U.S.C. 10910(g)(1).

Thus, if an applicant elects to be exempt from 49 U.S.C. 10903 *et seq.* when the feeder line application is filed, it will be able to expeditiously terminate its railroad operations *following* the expiration of the 3-year period.

Conclusion

We adopt the final rules set forth in Appendix B.

Pending notices of intent to file feeder applications are dismissed. Affected parties may immediately file applications in compliance with these regulations.

Regulatory Flexibility Analysis

These rules amend existing regulations which involve feeder line applications under section 10910 and their relationship to abandonment proceedings. These rules also clarify and streamline our application procedures. These changes will have a significant economic effect on a substantial number of small entities. They will have a beneficial impact on shippers and communities located on qualifying rail lines by assuring that these parties will continue to have a viable alternative to inadequate rail service and total abandonment of local rail lines through the acquisition of these lines. The issues raised by the public comments and the charges made in the proposed rules as a result have been addressed above.

This action will not significantly affect the quality of the human environment of conservation of energy resources.

List of Subjects in 49 CFR Part 1151

Administrative practice and procedure, Railroads.

This action is taken under the authority of 5 U.S.C. 553 and 49 U.S.C. 10321 and 10910.

Dated: February 22, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

Appendix A—Summary of Changes Contained in Final Rules

Section 1151.1 Scope.

No Change.

Section 1151.2 Procedures.

This section contains new provisions which: (1) Permit the filing of competing applications and adjust the evidentiary timetable accordingly; (2) eliminate the requirement that the Commission must issue a decision accepting applications but retain provisions requiring the Commission to reject unacceptable initial applications (within 15 days of filing) and competing applications (at any time); and (3) provide that the owning railroad is required to select between competing qualified applicants.

Section 1151.3 Contents of application.

This section imposes the same evidentiary requirements on initial and competing applications. Additionally, this section: (1) Provides that applicants must provide evidence in support of their NLV and GCV evidence; (2) states that the information requested for joint rates and divisions is optional; and (3) modifies the public notice requirements by eliminating **Federal Register** publication of the application in favor of notification of an expanded list of described parties.

Section 1151.4 Commission determination.

This section has been reworded for clarity. A provision for the Commission's acceptance of a voluntarily negotiated acquisition price has been added. As originally drafted, this section did not include certain statutory prerequisites to a Commission determination of joint rates and divisions. These prerequisites have been incorporated in the final rules.

Section 1151.5 Verification and copies.

No change.

Appendix B—Final Rules

Part 1158 of title 49 is revised to read as follows:

[11] The proposed rules did not change existing regulations concerning non-owning operators. Since this provision was incorporated into the original rules without substantive discussion, it is appropriate to address this issue here.

[12] While the AAR correctly states that the Congress has imposed a duty upon the *acquiring carrier* to hire (to the extent practicable) the employees who would work on the line [H.R. Rep. No. 96-1430, 96th Cong., 2nd Sess. at 125 (1980)], nothing precludes the delegation of this duty to the third party operator under the operating contract.

PART 1151—FEEDER RAILROAD DEVELOPMENT PROGRAM

1151.1 Scope.
1151.2 Procedures.
1151.3 Contents of application.
1151.4 Commission determination.
1151.5 Verification and copies.

Authority: 5 U.S.C. 553, 49 U.S.C. 10910.

§ 1151.1 Scope.

This part governs applications filed under 49 U.S.C. 10910. The Commission can require the sale of a rail line to a financially responsible person. A rail line is eligible for a forced sale if it appears in category 1 or 2 of the owning railroad's system diagram map (but the railroad has not filed an application to abandon the line), or the public convenience and necessity, as defined in 49 U.S.C. 10910(c)(1), permit or require the sale of the line. Until October 1, 1983, section 10910 is only applicable to lines that carried less than 3 million gross ton-miles of traffic per mile in the preceding calendar year.

§ 1151.2 Procedures.

(a) Before an application is filed, the applicant must obtain a docket number from the Commission's Rail Section.

(b) The application proceeding commences on the filing of the application with the Commission.

(c) Within 15 days of the receipt of the application, the Commission shall issue a decision rejecting the initial application if the Commission determines that the application does not substantially conform to these regulations regarding form and content.

(d) Within 30 days of the receipt of the initial application, other interested parties may file competing applications seeking to acquire all or any portion of the line sought in the initial application.

(e) At any time during the pendency of the proceeding, the Commission may issue a decision rejecting a competing application if the Commission determines that the competing application does not substantially conform to these regulations regarding form and substance.

(f) Within 60 days of the filing of the initial application, the owning railroad and other interested parties shall file their verified statements addressing the applications.

(g) Within 80 days of the filing of the initial application, applicants may file a verified reply.

(h) Within 140 days of the filing of the initial application, the Commission decision disposing of all issues shall be issued. If the Commission finds that the public convenience and necessity require or permit sale of a line, the Commission shall concurrently publish this finding in the **Federal Register.**

(i) Within 10 days of the service date of the decision ordering the sale, the applicant(s) must file a notice with the Commission and serve a copy on the owning railroad accepting or rejecting the Commission's determination.

(j) If two or more applicants timely file notices accepting the Commission's determination, the owning railroad shall select the applicant with whom it wishes to transact business. Within 15 days of the service date of the Commission decision, the owning railroad shall file this notice with the Commission and serve a copy on the applicants.

§ 1151.3 Contents of application.

(a) The initial application and all competing applications must include:

(1) Identification of the line to be purchased including:

(i) The name of the owning carrier; and

(ii) The exact location of the line to be purchased including milepost designations, origin and termination points, stations located on the line, and cities, counties and States traversed by the line.

(2) Identification of applicant including:

(i) The applicant's name and address;

(ii) The name, address, and phone number of the representative to receive correspondence concerning this application;

(iii) A description of applicant's affiliation with any railroad; and

(iv) If the applicant is a corporation, the names and addresses of its officers and directors.

(3) Information sufficient to demonstrate that the applicant is a financially responsible person. In this regard, the applicant must demonstrate its ability:

(i) To pay the higher of the net liquidation value (NLV) or going concern value (GVC) of the line; and

(ii) To cover expenses associated with providing services over the line (including, but not limited to, operating costs, rents, and taxes) for at least the first 3 years after acquisition of the line.

(4) An estimate of the NLV and the GCV of the line and evidence in support of these estimates.

(5) An offer to purchase the line at the higher of the two estimates submitted pursuant to paragraph (a)(4) of this section.

(6) The dates for the proposed period of operation of the line covered by the application.

(7) An operating plan that identifies the proposed operator; attaches any contract that the applicant may have with the proposed operator; describes in detail the service that is to be provided over the line, including all interline connections; and demonstrates that adequate transportation will be provided over the line for at least 3 years from the date of acquisition.

(8) A description of the liability insurance coverage carried by applicant or any proposed operator. If trackage rights are requested, the insurance must be at a level sufficient to indemnify the owning railroad against all personal and property damage that may result from negligence on the part of the operator in exercising the trackage rights.

(9) Any preconditions (such as assuming a share of any subsidy payments) that will be placed on shippers in order for them to receive service, and a statement that if the application is approved, no further preconditions will be placed on shippers without Commission approval. (This Statement Will Be Binding Upon Applicant if the Application is Approved.)

(10) The name and address of any person(s) who will subsidize the operation of the line.

(11) A statement that the applicant will seek a finding by the Commission that the public convenience and necessity permit or require acquisition, or a statement that the line is currently in category 1 or 2 of the owning railroad's system diagram map. (i) If the applicant seeks a finding of public convenience and necessity, the application must contain detailed evidence that permits the Commission to find that:

(A) The rail carrier operating the line refused within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over the line;

(B) The tranportation over the line is inadequate for the majority of shippers who transport traffic over the line;

(C) The sale of the line will not have a significantly adverse financial effect on the rail carrier operating the line;

(D) The sale of the line will not have an adverse effect on the overall operational performance of the rail carrier operating the line; and

(E) The sale of the line will be likely to result in improved railroad transportation for shippers who transport traffic over the line.

(ii) If the applicant seeks a finding that the line is currently in category 1 or 2 of the owning carrier's system diagram map, the relevant portion of the current map must be attached to the application.

(12) A statement detailing applicant's election of exemption from the provisions of Title 49, United States Code, and a statement that if the application is approved, no further exemptions will be elected. (This Statement Will Be Binding Upon the Applicant if the Application is Approved.)

(13) A description of any trackage rights sought over the owning railroad that are required to allow reasonable interchange or to move power equipment or empty rolling stock between noncontiguous feeder lines operated by the applicant, and an estimate of the reasonable compensation for such rights, including full explanation of how the estimate was reached. The description of the trackage rights shall include the following information: milepost or other identification for each segment of track; the need for the trackage rights (interchange of traffic, movement of equipment, etc.); frequency of operations; times of operation; any alternative to the use of trackage rights; and any other pertinent data. Trackage rights that are necessary for the interchange of traffic shall be limited to the closest point to the junction with the owning railroad's line that allows the efficient interchange of traffic. A statement shall be included that the applicant agrees to have its train and crew personnel take the operating rules examination of the railroad over which the operating rights are exercised.

(14) A description of any joint rate and division agreement that must be established. The description(s) shall include the following information: the railroad(s) involved; the estimated revenues that will result from the division(s); the total costs of operating the line segment purchased (including the trackage rights fees); and any other pertinent data.

Note.—This information is required only if the applicant requests that the Commission prescribe joint rates and division in the feeder line proceeding.

(15) The extent to which the owning railroad's employees who normally service the line will be used.

(16) If the application is filed before October 1, 1983, informaton sufficient to allow the Commission to determine that the line sought to be acquired carried less than 3 million gross ton-miles of traffic per mile in the preceding calendar year. Gross ton-miles are calculated by adding the ton-miles of the cargo and the ton-miles related to the tare (empty) weight of the freight cars used to transport the cargo in the loaded movement. In calculating the gross ton-miles, only those related to the portion of the segment purchased shall be included.

(17) An affidavit stating that the service requirements on § 1151.3(b) have been met.

(b) Concurrently with the filing of the application, applicant shall serve a copy of the application by certified mail on the following parties: the owning railroad; all rail patrons who originated and/or received traffic on the line during the 12-month period preceding the month in which the application is filed; the Designated State Agency in the State(s) in which the property is located; county governments in which the line is located; and the headquarters of the Railway Labor Executives' Association.

(c) Applicant shall make copies of the application available to interested parties upon request.

§ 1151.4 Commission determination.

(a) The Commission shall determine whether each applicant is a financially responsible person. To be a financially responsible person, the Commission must find that:

(1) The applicant is capable of paying the constitutional minimum value of the line and able to assure that adequate transportation will be provided over the line for at least 3 years;

(2) The applicant is not a class I or class II railroad or an entity affiliated with a class I or class II railroad.

(b) If the Commission finds that one or more applicants are financially responsible parties, it shall determine whether the involved line or line segment is a qualified line. A line is a qualified line if:

(1) Either

(i) The public convenience and necessity require or permit the sale of line or line segment; or

(ii) The line or line segment is classified in category 1 or 2 of the owning carrier's system diagram map; and

(2) The traffic level on the line or line segment sought to be acquired was less than 3 million gross ton-miles of traffic per mile in the preceding calendar year (Note: this finding will not be required for applications filed after October 1, 1983).

(c) If the Commission finds that one or more financially responsible parties have offered to buy a qualifying line of railroad, the Commission shall set the acquisition cost of the line at the higher of NLV or GCV, order the owning carrier to sell the rail line to one of the financially responsible applicants, and resolve any related issues raised in the application. If an applicant and the owning railroad agree on an acquisition price, that price shall be the final price.

(d) If trackage rights are sought in the application, the Commission shall, based on the evidence of record, set the adequate compensation for such rights, if the parties have not agreed.

(e) If the applicant requests the Commission to set joint rates or divisions and the line carried less than 3 million gross ton-miles of traffic per mile during the preceding calendar year, the Commission shall, pursuant to 49 U.S.C. 10705(a), establish joint rates and divisions based on the evidence of record in the proceeding. Unless specifically requested to do so by the selling carrier, the Commission will not set the rate for the selling railroad's share of the joint rate at less than the applicable level (for the year in which the acquisition is made) set by 49 U.S.C. 10709(d)(2), which limits Commission maximum ratemaking jurisdiction to rates above certain cost/price ratios.

§ 1151.5 Verification and copies.

(a) All pleadings permitted by these regulations must be verified.

(b) An original and 10 copies of an application, verified statement, comment or any other pleading permitted by these rules should be submitted to the Rail Section, Room 5417, Interstate Commerce Commission, Washington, D.C. 20423. The outside envelope and the first page of any document submitted under these rules should be clearly marked "Feeder Line Development."

[FR Doc. 83-5822 Filed 3-7-83; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration.

50 CFR Parts 611 and 656

[Docket No. 30301-31]

Foreign Fishing; Atlantic Mackerel Fishery

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

ACTION: Rule-related; notice inseason adjustment.

SUMMARY: NOAA has allocated 5,000 metric tons (mt) of the 6,000 mt Atlantic mackerel reserve to foreign fishermen. The remaining 1,000 mt will be retained in reserve for domestic harvest. This final notice follows procedures in the Fishery Management Plan for the

Atlantic Mackerel Fishery and implementing regulations. The intended effect of this allocation is to achieve optimum yield for this fishery through incentives to foreign fishermen and to encourage development of joint ventures off the east coast of the United States.

EFFECTIVE DATE: March 3, 1983.

FOR FURTHER INFORMATION CONTACT: Salvatore A. Testaverde, 617–281–3600.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Atlantic Mackerel Fishery, as amended, established a 6,000 mt reserve of mackerel (45 FR 45291, July 3, 1980). Regulations provide a mechanism to allocate all or part of the reserve to the total allowable level of foreign fishing (TALFF) during each fishing year (45 FR 77446, November 24, 1980). Sections 611.52(a) and 656.22(a) of the regulations direct the Regional Director of the Northeast Region, National Marine Fisheries Service, to publish for a 15-day comment period his projected amount of mackerel to be harvested by domestic fishermen (48 FR 5575, February 7, 1983). No comments were received.

Therefore, 5,000 mt of the 6,000 mt reserve will be allocated to TALFF to provide for the directed-catch portion of the German Democratic Republic joint venture. An equal amount may be taken by domestic fishermen in the joint venture. This opportunity will facilitate achievement of the optimum yield for the Atlantic mackerel fishery. The remainder of the 1,000 mt will be held in reserve for domestic fishermen.

List of Subjects

50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting requirements.

50 CFR Part 656

Fish, Fisheries, Fishing, Reporting requirements.

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

Dated, March 3, 1983.

Carmen J. Blondin,

Acting Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 83–5879 Filed 3–3–83; 5:09 p.m.]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 48, No. 46
Tuesday, March 8, 1983

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 944

Grapes Imported Into the United States; Proposed Grade, Size, Quality, and Maturity Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites written comments on a proposal which would establish, during the period May 1–August 15, 1983, quality requirements for vinifera species table grapes (except the Emperor, Calmeria, Almeria nd Ribier varieties) imported into the United States. Such grapes would be required to meet the minimum grade and size requirements for U.S. No. 1 Table grade, as defined in the U.S. Standards for Grades of Table Grapes (European or Vinifera type), and minimum maturity standards as defined in the Administrative Code of California. This action is needed to assure imports of ample supplies of table grapes of acceptable quality, and to promote orderly marketing in the interests of producers and consumers.

DATES: Comments must be submitted on or before March 23, 1983.

ADDRESS: Send two copies of comments to the Hearing Clerk, U.S, Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of imported table grapes for the benefit of producers and consumer, and will not substantially affect costs for the persons directly regulated.

The proposed table grape import regulation would be issued under Section 8e (7 U.S.C. 608–1) of the Agricultural Marketing Agreement Act of 1937, as amended. This section requires that whenever specified commodities, including table grapes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

The California Desert Grape Administrative Committee recommended grade, size, maturity, container, pack, and other requirements for table grapes grown in southeastern California, to be effective for the period May 1–August 15, 1983. A notice of propose rulemaking relative to this matter was published in the February 23, 1983, issue of the **Federal Register** (48 FR 7581).

This proposed regulation would require imported table grapes (except the Emperor, Calmeria, Almeria and Ribier varieties) to meet the minimum grade and size requirements of U.S. No. 1 Table Grade as specified in the U.S. Standards for Grades of Table Grapes (European or Vinifera type). In addition, such grapes would also be required to meet the minimum maturity requirements for table grapes as specified in the California Administrative Code. These requirements are the same as the grade, size and maturity requirements proposed for table grapes grown in southeastern California.

Certain maturity requirements cited in the proposed regulation are specified in the Administrative Code of California (Title 3). Copies of such requirements are available from william J. Doyle, Chief, Fruit Branch, F&V, AMS USDA, Washington, D.C. 20250, telephone 202–447–5975.

List of Subjects in 7 CFR Part 944

Fruits, Import regulations, Grapes.

PART 944—[AMENDED]

Proposal No. 1: Add a new § 944.501 to read as follows:

§ 944.501 Table Grape Import Regulation 1.

(a) *Applicability to imports.* Pursuant to section 8e of the Act and Part 944-Fruits; Import Regulations, during the period May 1, 1983, through August 15, 1983, the importation into the United States of any variety of vinifera species table grapes, except Emperor, Calmeria, Almeria, and Ribier varieties, is prohibited unless such grapes meet the minimum grade and size requirements specified in § 51.884 for U.S. No. 1 Table Grade, as set forth in the U.S. Standards for Grades of Table Grapes (European or Vinifera Type, 7 CFR 51.880–51.912), and minimum maturity standards in accordance with applicable sampling and testing procedures specified in §§ 1436.3–1436.17 of the administrative Code of California (Title 3).

(b) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of table grapes that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of table grapes, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 51) and in accordance with the Procedure for Requesting Inspection and Designating the Agencies to Perform Required Inspection and Certification (7 CFR Part 944.400).

(c) The term "importation" means release from custody of the United States Customs Service.

(d) Any lot or portion thereof which fails to meet the import requirements may be reconditioned or exported. Any failed lot which is not exported shall be disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of said lot borne by the importer.

(e) It is determined that imports of table grapes, during the effective time of

this regulation, are in most direct competition with table grapes grown in southeastern California, under M.O. 925 (7 CFR Part 925). The grade, size, quality and maturity requirements of this section are the same as those applicable to table grapes grown in southeastern California.

Proposal No. 2: Amend § 944.400 by revising the title and paragraph (a) thereof to read as follows:

§ 944.400 Designated inspection services and procedure for obtaining inspection and certification of imported avocados, grapefruit, limes, oranges, and table grapes regulated under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended.

(a) The Federal or Federal-State Inspection Service, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, is hereby designated as the governmental inspection service for the purpose of certifying the grade, size, quality, and maturity of avocados, grapefruit, limes, oranges and table grapes that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with appropriate evidence thereof in the form of an official inspection Service with appropriate evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of the specified fruit, is required on all imports. Such inspection and certification services well be available upon application in accordance with the Regulations Governing Inspection, Certification and Standards for Fresh Fruits, Vegetables, and Other Products (7 CFR part 51) but, since inspectors are not located in the immediate vicinity of some of the small ports of entry, such as those in southern California, importers of avocdos, grapefruit, limes, oranges, and table grapes should make arrangements for inspection, through the applicable one of the following offices, at least the specified number of days prior to the time when the fruit will be imported:

* * * * *

Dated: March 3, 1983.

D. S. Kuryloski,

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

[FR Doc. 83-5838 Filed 3-7-83; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1106

Milk in the Southwest Plains Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites written comments on a proposal to suspend certain shipping standards for supply plants regulated under the Southwest Plains milk order. The suspension would apply during the months of March through July 1983. Under the proposed action, no shipments of milk to distributing plants from supply plants would be required in order to pool supply plants that were previously associated with the market. The action was requested by the operator of a pool supply plant because of increasing production and a decline in demand for milk in fluid uses. Because of a change in the market's supply-demand relationship, the plant operator does not anticipate that any supply plant shipments will be necessary to furnish the fluid milk needs of distributing plants. Without the suspension, proponent contends that unneeded and uneconomic shipments of supply plant milk would have to be made solely for the purpose of pooling milk of diary farmers who have historically furnished the fluid milk needs of the market.

DATE: Comments are due not later than March 15, 1983.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-4824.

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

It has been determined that any need for suspending certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the **Federal Register.** However, this would not permit the completion of the required suspension procedures and the inclusion of March 1983 in the suspension period if this is found necessary. The initial request for this action was received on February 24, 1983.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to insure the dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accure from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Southwest Plains marketing area is being considered for the months of March through July 1983:

1. In § 1106.6, the language "during the month".

2. In § 1106.7(b)(1), the language "until any month of such period in which less than 20 percent of the milk received or diverted as previously specified, is shipped to plants described in paragraph (a) of this section. A plant not meeting such 20 percent requirement in any month of such February–August period shall be qualified in any remaining month of such period only if transfers and diversions pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) of this section are not less than 50 percent of receipts or diversions, as previously specified" and the language "until any month of such period in which the plant fails to meet the 20 percent shipping requirement".

All persons who desire to submit written data, views, or arguments in connection with the proposed suspension should file two copies of such material with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, not later than 7 days from the date of publication of this notice in the **Federal Register.** The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include March 1983 in the suspension period.

The comments that are sent will be available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

Under the proposed suspension no shipments of milk to distributing plants from supply plants would be required in order to pool supply plants that were previously associated with the market. The order currently defines a supply plant as a plant from which shipments are made to distributing plants during the month. Also, the order provides that supply plants that were pooled during each of the previous months of September through January under the Southwest Plains order or during the months of September through December 1982 under any of the four predecessor orders that were merged to form the Southwest Plains order effective January 1, 1983, will be pooled during the following months of February through August if not less than 20 percent of monthly receipts are shipped to pool distributing plants. The proposed action would eliminate the supply plant shipping standards for pooling such plants during March–July 1983.

The action was requested by a handler who operates a supply plant that is currently pooled under the order on the basis of milk shipments to pool distributing plants. The plant was also pooled during each of the previous months of September 1982 through January 1983 under the Southwest Plains order or its predecessdor orders. The handler contends that the suspension is necessary because of a general increase in production without a corresponding increase in the demand for milk in fluid use. Because of a change in the supply-demand relationship, proponent does not anticipate that any shipments from its supply plant will be needed to furnish the fluid milk needs of distributing plants. The handler contends that without the suspension unneeded and uneconomic shipments of milk would have to be made solely for the purpose of pooling the milk of dairy farmers who have historically supplied the fluid milk needs of the market.

List of Subjects in 7 CFR Part 1106

Milk Marketing Orders, Milk, Dairy products.

Signed at Washington, D.C. on March 2, 1983.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 83-5836 Filed 3-7-83; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Parts 3, 6, 7, and 32

[Docket No. 83-12]

National Bank Lending Limits; Extension of Comment Period

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Extension of comment period.

SUMMARY: The Comptroller of the Currency is extending the comment period for the proposed rulemaking on national bank lending limits by 14 days to encourage maximum public participation in this matter.

DATE: Comments must be received on or before March 22, 1983.

ADDRESS: Please send comments to Docket No. 82-25, Communications Division, Third Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, D.C. 20219. Attn: C. Christine Jones ((202) 447-1768).

FOR FURTHER INFORMATION CONTACT: Carol M. Beaumier, Manager, International Examinations ((202) 447-1747); Howard J. Finkelstein, Attorney, Legal Advisory Services Division ((202) 447-1880); Claire Owen, National Bank Examiner, Commercial Examinations ((202) 447-1164).

SUPPLEMENTARY INFORMATION: On December 21, 1982 (47 FR 56882), the Office of the Comptroller of the Currency published proposed regulations implementing section 401(a) of Pub. L. 97-320, relating to national bank lending limits. On February 1, 1983, the comment period for the proposed regulation was extended to February 18, 1983. The agency has received requests that the comment period be reopened in order to facilitate consultations with representatives of the banking industry. The agency has considered the requests and concluded that an additional 14 days would allow for greater public participation in the rulemaking. Accordingly, the comment period is being extended to March 22, 1983.

Dated: March 4, 1983.

Doyle L. Arnold,

Acting Comptroller of the Currency.

[FR Doc. 83-5942 Filed 3-7-83; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM79-76-187 (New Mexico-22)]

High-Cost Gas Produced from Tight Formations, New Mexico; Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

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

DATE: Comments on the proposed rule are due on April 18, 1983. *Public Hearing:* No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on March 18, 1983.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 358-8511, or Victor Zabel, (202) 357-8616.

SUPPLEMENTARY INFORMATION:

Issued: March 3, 1983.

I. Background

On February 16, 1983, the State of New Mexico Energy and Minerals Department, Oil Conservation Division (New Mexico) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the Morrow Formation located in Lea and Eddy

Counties, New Mexico, be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether New Mexico's recommendation that the Morrow Formation be designated a tight formation should be adopted. The United States Department of the Interior, Minerals Management Service concurs with New Mexico's recommendation. New Mexico's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The recommended area is located in southeast New Mexico and consists of approximately 319,000 acres. The recommended formation underlies the northeast corner of Lea County and southeast quarter of Eddy County, New Mexico. The Morrow Formation is defined as that interval located stratigraphically above the Mississippian Barnett Shale and below the Pennsylvanian Atoka Formations. The average depth to the top of the Morrow Formation is 13,600 feet, and the thickness of the formation varies from 928 feet to 1,475 feet.

III. Discussion of Recommendation

New Mexico claims in its submission that evidence gathered through information and testimony presented at a public hearing in Case 7735 convened by New Mexico on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

New Mexico further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by New Mexico that the Morrow Formation, as described and delineated in New Mexico's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before April 18, 1983. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM 79-76-187 (New Mexico-22), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing of the desire to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than March 18, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event New Mexico's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703 is amended by adding paragraph (d)(170) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(170) *Morrow Formation in New Mexico.* RM 79-76-187 (New Mexico-22).

(i) *Delineation of formation.* The Morrow Formation is located in Lea and Eddy Counties, New Mexico, in Township 19 South, Range 31 East, Sections 27 S/2, 33 E/2, 34 and 35; Township 20 South, Range 30 East, Sections 25, 26, 31 through 34, 35 N/2 and 36; Township 20 South, Range 31 East, Sections 1 through 36; Township 20 South, Range 32 East, Sections 2 through 11, 14 through 23, and 26 through 35; Township 21 South, Range 28 East, Sections 1 and 2, 3: Lots 3, 4, 5, 6, 11, 12, 13, 14, and S/2, 4 through 20, 21 W/2, 22 through 25, 26 S/2, 27, 28, 29 S/2, and 30 through 36; Township 21 South, Range 29 East, Sections 1 through 7, 8 N/2, and 9 through 36; Township 21 South, Range 30 East, Sections 1 through 12, 14 through 23, and 27 through 34; Township 21 South, Range 31 East, Sections 1 through 12; Township 22 South, Range 28 East, Sections 1 through 28, and 33 through 36; Township 22 South, Range 29 East, Sections 1 through 36; Township 22 South, Range 30 East, Sections 3 through 10, 13 W/2 W/2 and Ne/4 NW4, 14 through 23, 24 W/2 NW/2 NW/4, and 26 through 36; Township 23 South, Range 29 East, Sections 1 through 3, 10 through 12, 13 W/2, 14, 15, 22 through 27, and 34 through 36; Township 23 South, Range 30 East, Sections 1 through 17, 18 S/2, and 19 through 36; Township 23 South, Range 31 East, Sections 19, 30, and 31; Township 24 South, Range 29 East, Sections 1 and 2, 11 through 14, 23 through 26, 35, and 36; Township 24 South, Range 30 East, Sections 1 through 7, 8 N/2, 9 through 16, 17 E/2, and 18 through 36; Township 24 South, Range 31 East, Sections 6, 7, 15 through 22, and 27 through 34; Township 25 South, Range 30 East, Sections 1 through 36; Township 25 South, Range 31 East, Sections 3 through 10, 15 through 22, and 27 through 34; Township 26 South, Range 30 East, Sections 1 through 12; Township 26 South, Range 31 East, Sections 3 through 10; NMPM.

(ii) *Dept.* The Morrow Formation is defined as that interval located stratigraphically above the Mississippian Barnett Shale and below the Pennsylvanian Atoka Formations. The average depth to the top of the Morrow Formation is 13,600 feet. The Morrow Formation varies in thickness from 928 feet to 1,475 feet.

[FR Doc. 83-5898 Filed 3-7-83; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM79-76-188 (New Mexico-23)]

High-Cost Gas Produced From Tight Formations, New Mexico; Proposed Rulemaking

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

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

DATE: Comments on the proposed rule are due on April 18, 1983. *Public Hearing:* No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on March 18, 1983.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street NE., Washington, D.C. 20426.

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

SUPPLEMENTARY INFORMATION:

Issued: March 3, 1983.

I. Background

On February 18, 1983, the State of New Mexico Energy and Minerals Department, Oil Conservation Division (New Mexico) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that the Chacra Formation located in Rio Arriba County, New Mexico, be designated as a tight formation. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determined whether New Mexico's recommendation that the Chacra Formation be designated a tight formation should be adopted. The United States Department of the Interior, Minerals Management Service concurs with New Mexico's recommendation. New Mexico's recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

The Chacra Formation is located in the southeastern portion of the San Juan Basin in Rio Arriba County, New Mexico. The recommended area is comprised of approximately 20,160 acres including all of Sections 4 through 8, and the N/2 of Sections 9 and 10 Township 25 North, Range 7 West, NMPM; as well as all of Sections 5 through 9, 15 through 22, 26 through 36, the W/2 of Section 10, the S/2 of Section 14, and the SW/4 of Sections 23 and 25 in Township 26 North, Range 7 West, NMPM. The type section for the Chacra Formation is found at a depth of approximately 3,734 to 3,844 feet on an Induction Gamma Ray Log from the Curtis J. Little Turner Well No. 2. The average depth to the top of the Cacra Formation is 3,350 feet. The thickness of the Chacra Formation ranges from 110 to 130 feet.

III. Discussion of Recommendations

New Mexico claims in its submission that evidence gathered through information and testimony presented at a public hearing in Case No. 7783 convened by New Mexico on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

New Mexico further asserts that existing State and Federal Regulations assure that development of this formation will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80-68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by New Mexico that the Chacra Formation, as described and delineated in New Mexico's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before April 18, 1983. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76-188 (New Mexico-23), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C. during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing of the desire to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than March 18, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event New Mexico's recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703(d) is amended by adding subparagraph (171) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(171) *Chacra Formation in New Mexico.* RM79-76-188 (New Mexico-23).

(i) *Delineation of formation.* The Chacra Formation is located in all of Sections 4 through 8, and the N/2 of Sections 9 and 10 in Township 25 North, Range 7 West, NMPM; as well as all of Sections 5 through 9, 15 through 22, 26 through 36, the W/2 of Section 10, the S/2 of Section 14, and the SW/4 of Sections 23 and 25 in Township 26 North, Range 7 West, NMPM, in Rio Arriba County, New Mexico.

(ii) *Depth.* The Chacra Formation is located approximately 30 miles southeast of the town of Bloomfield in northwestern New Mexico in the southeastern portion of the San Juan Basin. The type section for the Chacra Formation is found at a depth of approximately 3,734 feet to 3,844 feet on an Induction Gamma Ray Log from the Curtis J. Little Turner Well No. 2. The average depth to the top of the Chacra Formation is 3,350 feet. Thickness of the Chacra Formation ranges from 110 to 130 feet.

[FR Doc. 83-5869 Filed 3-7-83; 8:45 am]
BILLING CODE 6717-01-M

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18 CFR Part 271

[Docket No. RM79-76-176 (Texas—3 Addition VI)]

High-Cost Gas Produced From Tight Formations; Texas

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR § 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the Railroad Commission of Texas that an additional area of the Cisco-Canyon Formations located in southwest Sterling County, Texas in the area of the Conger (Penn) Field be designated as tight formations under § 271.703(d).

DATE: Comments on the proposed rule are due on April 15, 1983.

Public hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on March 16, 1983.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

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

SUPPLEMENTARY INFORMATION:

Issued: March 1, 1983.

I. Background

On January 10, 1983, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (45 FR 56034, August 22, 1980), that an additional area of the Cisco-Canyon Formations located in southwest Sterling County, Texas, in the area of the Conger (Penn) Field be designated as tight formations. The Commission previously adopted a recommendation that the Cisco-Canyon Formations in a specified portion of Glasscock County be designated as tight formations (Order No. 242, issued July 15, 1982, in Docket No. RM79-76 (Texas—3 Addition III)) and currently has under consideration recommendations that additional areas of the Cisco-Canyon Formations in Glasscock, Reagan and Sterling Counties be designated as tight formations (Docket No. RM79-76-149 (Texas—3 Addition IV), Notice of Proposed Rulemaking issued December 16, 1982, and Docket No. RM79-76-166 (Texas—3 Addition V), Notice of Proposed Rulemaking issued February 14, 1983). Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation that an additional area of the Cisco-Canyon Formations in southwest Sterling County be designated tight formations should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Texas recommends that an additional area of the Cisco-Canyon Formations encountered in the Southwestern portion of Sterling County, in west Texas, Railroad Commission District 8, in the area of the Conger (Penn) Field be designated as tight formations. The recommended area is an expansion of the Cisco-Canyon Formations in Glasscock, Reagan and Sterling Counties which are currently being considered or have previously been approved by the Commission. The recommended area includes Sections 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36 of Block 22, H&TC RR Survey; Sections 13, 14, 23 and 24, Block 32, T-5-S, T&P RR Survey; Sections 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30, Block 31, T-5-S, T&P RR Survey; Section 1, C&M RR Survey; Section 2, O. R. Wilson Survey; Sections 3 and 4, Block 2, T&P RR Survey; all of Mrs. Ann Morrison Survey No. 7; all of F. A. Brooks Survey No. 4; and the north 656.65 acres of the north part of Moses Herrin Survey No. 6, Block A.

For the total area of the Cisco-Canyon Formations which have either been approved or are currently under consideration by the Commission including the additional area recommended herein, the top of the Cisco Formation varies from approximately 6,990 feet in the northeast part of the area to 8,670 feet in the southwest. The depth to the top of the Canyon Formation (the base of the Cisco Formation) varies from 7,370 feet in the northeast to 8,810 feet in the southwest part of the area. Total thickness of the two sandstone formations varies from approximately 200 feet in the southwest to 710 feet in the northeast.

III. Discussion of Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by Texas on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formations, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formations is expected to produce more than five (5) barrels of oil per day.

Texas further asserts that existing State and Federal regulations assure that development of these formations will not adversely affect any fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of

Pipeline and Producer Regulation by Commisssion Order No. 97, issued in Docket No. RM80-68 (45 FR 53456, Auguat 12, 1980) notice is hereby given of the proposal submitted by Texas that the Cisco-Canyon Formations, as described and delineated in Texas' recommendation as filed with the Commission, be designated as tight formations pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaknng by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before April 15, 1983. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76-176 (Texas—3 Addition IV), and should give reasons including supporting data for any recommendations. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washingtin, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing of a desire to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than March 16, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Texas' recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

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

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* * * *

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

(iii) *The Cisco-Canyon Formations.*

(A) *Delineation of formation.* The Cisco-Canyon Formations are found in the area of the Conger (Penn) Field and the Conger, S.W. (Penn) Field in Glasscock, Reagan and Sterling Counties, Texas, Railroad Commission Districts 7C and 8. The area includes the following surveys: T&P RR Block 33, T-5-S, Sections 34, 36, and W ½ of 38; T&P RR, Block 32, T-5-S, Sections 13 through 17, 20 through 29, 32 through 42 and 44 through 48; EL & RR RR Sections 1, 2, 3 and 4; D. L. Carver Section 4; H. T. Tweedle Section 2; T&P RR, Block 2, Sections 3, 4, 9 through 14, 21 through 26, 33 through 36, 41, 43, 44, 49 through 52, 61, 62, 69, 70, 71, 89 through 92, 100, 118, 128, 146, 155 and 156; GC & SF RR Sections 1 and 3; GC & SF RY Section 1; W. C. Elam Section 4; CT & MC RR Section 2; W. R. Barton Section 4; S. H. Birdwell Section 17; Brooks & Burleson Sections 1 and 2; T. B. Wilson Section 2; RR Section 1; H&TC RR, Block 22, Sections 19 through 36; T&P RR, Block 31, T-5-S, Sections 4, 5 and 7 through 30; O. R. Wilson Section 2; Mrs. Ann Morrison Section 7; F. A. Brooks Section 4; and the north 656.65 acres of the north part of Moses Herrin No. 6 Block A.

(B) *Depth.* The depth to the top of the Cisco Formation varies from approximately 8,670 feet in the southwest part of the area to 6,990 feet in the northeast. The depth to the top of the Canyon Formation varies from approximately 8,810 feet in the southwest to 7,370 feet in the northeast. Total thickness of the two formations varies from approximately 200 feet in the southwest to 710 feet in the northeast.

[FR Doc. 83-5502 Filed 3-7-83; 8:45 am]

BILLING CODE 6712-01-M

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18 CFR Part 271

[Docket No. RM79-76-169 (Texas—22 Addition III)]

High-Cost Gas Produced from Tight Formations; Texas

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commisson determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This Notice of Proposed Rulemaking by the Director of the Office of Pipeline and Producer Regulation contains the recommendation of the Railroad Commission of Texas that the Strawn-Detrital Formation be designated as a tight formation under § 271.703(d).

DATE: Comments on the proposed rule are due on April 15, 1983.

Public hearing: No public hearing is scheduled in this docket as yet. Written requests for a public hearing are due on March 16, 1983.

ADDRESS: Comments and requests for hearing must be filed with the Office of the Secretary, 825 North Capitol Street, NW., Washington, DC. 20426.

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

SUPPLEMENTARY INFORMATION:

Issued: March 1, 1983.

I. Background

On December 23, 1982, the Railroad Commission of Texas (Texas) submitted to the Commission a recommendation, in accordance with § 271.703 of the Commission's regulations (5 FR 56034, August 22, 1980), that additional areas of the Strawn-Detrital Formation adjacent to and including portions of the University Block 31 (Strawn-Detrital) and Howards Creek (Penn) fields in Crockett county, Texas, be designated as a tight formation. On August 24, 1982, the Commission issued Order No. 249 in Docket No. RM79-76-111 (Texas—22) in which the Commission designated portions of the Strawn-Detrital Formation in the University Block 31 (Strawn-Detrital) Field as a tight formation under § 271.703. Other recommendations are currently under consideration to designate the Detrital Formation in the Perner Ranch area [Notice of Proposed Rulemaking issued December 2, 1982, Docket No. RM79-76-150 (Texas—22 Addition)] and additional areas of the Strawn-Detrital Formation in the University Block 31 Field area [Notice of Proposed Rulemaking issued December 23, 1982, Docket RM79-76-157 (Texas—22 Addition II)] as tight formations.

Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Texas' recommendation, that the additional areas of the Strawn-Detrital Formation be added to the previously designated tight formation should be adopted. Texas' recommendation and supporting data are on file with the Commission and are available for public inspection.

II. Description of Recommendation

Texas recommends that the Strawn-Detrital Formation in areas adjacent to and including portions of the University Block 21 (Strawn-Detrital) Field and the Howards Creek (Penn) Field in Crockett County, Texas, Railroad Commission District 7C, be designated as a tight formation. The recommendation consists of approximately 22,400 acres and is divided into two specific areas. Area I consists of Sections 7, 8, 9, 16, 17, 18 and the south half of Section 10, Block 30 and Sections 6 through 11 and 13 through 16, Block 33 of the University Land Survey Crockett County. Area II consists of Sections 50 through 53, 66 through 70, 76 through 79, 91 through 93, the southern halves of Sections 54 and 90, the northern halves of Sections 49 and 94, and the eastern half of Section 71, Block OP, of GC and SF Railroad Company Survey Crockett County.

The average depth to the top of the Strawn-Detrital Formation in Area I is approximately 8,535 feet and the formation varies in thickness from approximately 100 feet to 250 feet. In Area II, the average depth to the top of the formation is approximately 7,950 feet and the formation varies in thickness from approximately 50 feet to 100 feet.

III. Discussion of Recommendation

Texas claims in its submission that evidence gathered through information and testimony presented at a public hearing on November 17, 1982, convened by Texas on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the recommended formation, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 271.703(c)(2)(i)(B); and

(3) No well drilled into the recommended formation is expected to produce more than five (5) barrels of oil per day.

Texas further asserts that existing State and Federal regulations assure that development of the formation will not adversely affect any fresh water aquifers that are or are expected to be used as a domestic or agricultural water supply.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued in Docket No. RM80-68 (45 FR 53458, August 12, 1980), notice is hereby given of the proposal submitted by Texas that the Strawn-Detrital Formation, as described and delineated in Texas' recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

IV. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before April 15, 1983. Each person submitting a comment should indicate that the comment is being submitted in Docket No. RM79-76-169 (Texas—22 Addition III) and should give reasons including supporting data for any recommendation. Comments should include the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the Secretary of the Commission. Written comments will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C., during business hours.

Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing of a desire to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Secretary of the Commission no later than March 16, 1983.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

(Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432)

Accordingly, the Commission proposes to amend the regulations in Part 271, Subchapter H, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Texas' recommendation is adopted.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

PART 271—[AMENDED]

Section 271.703(d) is amended by revising paragraph (106)(i) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(106) Strawn-Detrital Formation in Texas. RM79-76 (Texas—22).

(i) *University Block 31 (Strawn-Detrital) and Howards Creek (Penn) Fields.*

(A) *Delination of formation.* The Strawn-Detrital Formation in the area of the University Block 31 and Howards Creek Fields is located in Crockett County, Texas, Railroad Commission District 7C, the designated area consists of Section 7, 8, 9, the south half of Section 10, Sections 16 through 20, the south half of Section 21, Sections 29 through 32, Block 30, University Lands Survey; all Sections in Block 31, University Lands Survey; Sections 1, 2, 3, the south half of Section 4, Section 5, through 8, the south half of Section 9, Sections 11 through 14, and the north half of Section 18, Block 32, University Lands Survey; Sections 6 through 20, Block 33, University Lands Survey; the southwest ¼ of Section 12, Section 29, 30, 31, the south half of Section 32, Sections 50, 51, and the southeast ¼ of Section 53, Block UV, GC & SF RR Co. Survey; Section 2, Block ST-2, GC & SF RR Co. Survey; the north half of Hampton Survey; Section 1001 of W. C. Hall Survey; Section 1002 of J. M. Jean Survey; Section 1003 of M. F. Lopez Survey; Sections 1, 2, 14 through 18, Block ST, GC & SF RR Co. Survey; the north half of Section 49, Sections 50 through 53, the south half of Section 54, Sections 66 through 70, the east half of Section 71, Sections 76 through 79, the south half of Section 90, Sections 91, 92, 93 and the north half of Section 94, Block OP, GC & SF RR Co. Survey.

(B) *Depth.* The average depth to the top of the Strawn-Detrital formation is approximately 7,900 feet in the north and 8,535 feet in the southwest. The thickeness of the formation varies from 50 feet to 100 feet in the northeast and

from 100 feet to 250 feet in the southwest.

* * * * *

[FR Doc. 83-5503 Filed 3-7-83; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 14

Rights-of-Way Regulations; Power Transmission Lines

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking would eliminate an outdated and unneeded provision concerning wheeling stipulations in existing right-of-way regulations. The provision currently reserves the Department of the Interior's right to utilize capacity of electric power and energy transmission facilities requiring right-of-way permits to cross Federal lands within the National Park System.

DATE: Written comments, will be accepted until April 7, 1983.

ADDRESS: Comments should be directed to: Associate Director, Management and Operations, National Park Service, 18th & C Streets NW, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Arthur E. Eck, Ranger Activities and Protection Division, National Park Service, Telephone: (202) 343-5607.

SUPPLEMENTARY INFORMATION:

Background

This proposed rulemaking would revise the right-of-way regulations for the National Park Service. Specifically, the wheeling stipulation, which allows the Department of the Interior to utilize capacity of electric power and energy transmission facilities crossing Park System lands, contained in 36 CFR 14.76(a)(5)(ii), would be deleted. Wheeling stipulations had been a requirement of the Department from 1948 to 1954, and again from 1963 to 1982. By final rulemaking published March 23, 1982 (47 FR 12568), the Bureau of Land Management deleted this requirement from its regulations in 43 CFR Part 2800. This revision is consistent with the Bureau's deletion.

Drafting Information

The principal author of this proposed rule is Arthur E. Eck, Ranger Activities and Protection Division, National Park Service.

Paperwork Reduction Act

This rule does not contain information collection requirments which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

It is hereby determined that the publication of this document is not a major Federal action significantly affecting the quality of the human environment, and that no detailed statement is required pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

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 numbers of small entities" under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The revision is expected to have little effect on costs to consumers of power marketing agencies; the agencies may negotiate with applicants or seek orders for wheeling from the Department of Energy under 16 U.S.C. 824j. The revised regulation will reduce the cost to the United States of processing some rights-of-way applications, as well as costs to applicants caused by delays.

Authority

Section 3 of the Act of August 25, 1916, 39 Stat. 535 as amended (16 U.S.C. 3).

List of Subject in 36 CFR Part 14

National parks; Electric power; Public lands rights of way.

PART 14—[AMENDED]

In consideration of the foregoing, § 14.76, Subpart F of Part 14, Title 36 of the Code of Federal Regulations is amended by revising paragraph (a)(5) to read as follows:

§ 14.76 Terms and conditions.

(a) * * *

(5) An applicant for a right-of-way for a transmission facility having a voltage of 66 kilovolts or more must, in addition to the requirements of Subpart C, execute and file with its application a stipulation agreeing to accept the right-of-way grant subject to the following condition: In the event the United States, pursuant to law, acquires the applicant's transmission or other facilities constructed on or across such right-of-way, the price to be paid by the United States shall not include or be affected by any value of the right-of-way granted to the applicant under authority of the regulations of this part.

* * * * *

Dated: January 21, 1983.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-5848 Filed 3-7-83; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Michigan

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: The purpose of today's rulemaking is to propose approval of Consent Order APC No. 02-1980, for the Hayes-Albion Corporation and Permits 341-79 and 375-79 for the American Colloid Plant, as revisions to the Michigan State Implementation Plan (SIP) for Calhoun County. Consent Order APC No. 02-1980, contains control measures beyond the present requirements of Michigan's Rule 336.1301 and 336.1331 for reducing total suspended particulate (TSP) emissions. EPA is proposing to approve these revisions.

DATE: Comments on these revisions and on the proposed EPA action must be received by April 7, 1983.

Copies of the revision and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone the contact person listed below, before visiting the Region V Office).

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

Michigan Department of Natural Resources, Air Quality Division, 7150 Harris Drive, Lansing, Michigan 48909

Comments on this proposed rule should be addressed to (Please submit an original and five copies, if possible): Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Toni Lesser, Air Programs Branch, Region V, Environmental Protection Agency 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886-6037.

SUPPLEMENTARY INFORMATION: On April 5, 1982, the State of Michigan submitted to EPA Consent Order APC No. 02-1980 for the Hayes-Albion Corporation, along with alterations to Section 5(D) of the Consent Order, and permits 341-79 and 375-79 for the American Colloid Plant. The Hayes-Albion foundry is located in Calhoun County. A one-square mile area on the west side of Albion City, around Hayes-Albion (Calhoun County, R4W, T2S, Section 34), has been designated as nonattainment for the primary TSP standards. On June 18, 1982, the State of Michigan submitted a Fugitive Dust Control Plan and a Malfunction Abatement Plan for major air cleaning devices at Hayes Albion as part of its SIP revision. These plans contain specific measures for reducing TSP emissions and have been implemented by the dates specified in Consent Order APC No. 02-1980.

On October 25, 1982, EPA announced the availability of this revision and took final action to approve (47 FR 47245). In that notice, EPA advised the public that it was deferring the effective date of its approval for 60 days, until December 27, 1982, to provide an opportunity for submittal of comments on the revision. EPA announced that, if within 30 days of the publication of approval notice we received notice that someone wished to submit an adverse or critical comment we would withdraw the approval and begin a new rulemaking by proposing the action and establishing a 30-day comment period. EPA also published a general notice announcing this special procedure on September 4, 1981 (46 FR 44476).

EPA has received notice that someone wishes to submit an adverse or critical comment. Therefore, in accordance with the procedure described above, EPA today is taking final action elsewhere in today's **Federal Register** to withdraw its October 25, 1982, approval of this revision to the Michigan SIP for the Hayes-Albion Corporation and in this notice, is reproposing to approve the revision. A detailed description of the revision and EPA's rationale for proposing approval are contained in the 47 FR 47245. Interested persons are invited to submit comments on this proposed approval. EPA will consider all coments received within 30 days of the publication of this notice.

Under Executive Order 12291, today's action is not "Major". The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

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

This notice is issued under authority of section 110 of the Clean Air Act as amended (42 U.S.C. 7410).

Dated January 28, 1983.

Alan Levin,

Acting Regional Administrator.

[FR Doc. 83-5853 Filed 3-7-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 86

[AMS-FRL-2319-2]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Emissions Standards for 1985 and Later Model Year Light-Duty Vehicles

AGENCY: Environmental Protection Agency.

ACTION: Notice of public hearing.

SUMMARY: EPA will hold a public hearing on the Notice of Proposed Rulemaking (NPRM) to implement section 206(f)(1) of the Clean Air Act, as amended, for 1985 and subsequent model year light-duty vehicles (LDVs). Under the statute, all 1984 and later model year LDVs must meet the national emission standards regardless of the altitude at which they are sold. The proposed requirements for 1985 and later LDVs are identical to those recently promugated as an interim final rule for 1984 LDVs. Both the NPRM and the final rule were published in the **Federal Register** on February 18, 1983 (48 FR 7399 and 48 FR 7392, respectively). Anyone desiring a complete description of the proposed regulations should refer to the 1984 interim final rulemaking.

DATES: The hearing will be held on March 22, 1983 and will convene at 9:30 a.m. and adjourn at such time as is necessary to complete the testimony. Written comments on the proposal will be accepted through April 21, 1983.

ADDRESSES: The hearing will be held at the Federal Office Building, Tenth Floor, 1961 Stout Street, Denver, CO 80202. Written comments should be submitted (perferably 4 copies) to: Central Docket Section (A-130), Environmental Protection Agency, Docket No. A-80-01, 401 M Street, SW., Washington, D.C. 20460. Docket No. A-80-01 is located at the U.S. EPA, Central Docket Section, West Tower Lobby, Gallery 1, 401 M Street, SW., Washington, D.C. 20460. The docket may be inspected between 8:00 a.m. and 4:00 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Mr. Richard S. Wilcox, Emission Control Technology Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105, (313) 668-4390.

SUPPLEMENTARY INFORMATION:

I. Background

Section 206(f)(1) of the Clean Air Act, as amended, requires all 1984 and later LDVs to comply with the national emission standards of section 202 regardless of the altitude at which they are sold. On February 18, 1983, EPA published an interim final rule which implemented this Congressional mandate for the 1984 model year (48 FR 7392). On the same date, EPA also published a notice of proposed rulemaking (NPRM) in the **Federal Register** which would establish identical emission control requirements for 1985 and later model years (48 FR 7399).

Anyone desiring the complete details of the NPRM should refer to the 1984 interim final rulemaking. However, for convenience the main components of the proposal are briefly summarized below.

1. Every LDV would need to be capable of automatically controlling emissions of hydrocarbon (HC), carbon monoxide, nitrogen oxides, evaporative HC, and diesel particulate to the levels required by the national emission standards at both low and high altitudes, unless otherwise exempted.

2. Exemptions from the above requirement would be available for certain low-power vehicles in order to prevent adversely affecting model availability at all altitudes. Such exempted vehicles would be certified for sale at low altitude only.

3. Certification to the national emission standards would be specifically required only at a single low-altitude location and a single high-altitude location.

4. Compliance with emission standards at low altitude will continue to be demonstrated using the applicable Federal Test Procedure (FTP) and other existing certification protocols. At high altitude, manufacturers have the option of performing FTP tests or relying on engineering evaluations to determine compliance.

II. Public Participation

Any person desiring to make a statement at the hearing should provide written notice of such intention to the contact person indicated above by March 18, 1983. This notice should include an estimate of the length of the testimony and any need for audio/visual equipment. If possible, we request that

an advance copy of the proposed statement or material be included.

The record of the hearing will be left open for 30 days (through April 21, 1983) following the close of the hearing to allow submission of rebuttal and supplementary information. Any documents submitted during this period of time should be sent to the EPA Central Docket Section at the address shown above. It is also requested, but not required, that a copy of this submittal be sent directly to the contact person indicated above.

Commenters desiring to submit proprietary information should separate it from the other comments to the greatest extent possible, and label it "Confidential Business Information." Submissions containing such proprietary information should be sent directly to the appropriate Agency contact indicated above, and not to the Docket, to ensure that proprietary information is not inadvertently placed in the public docket.

Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 CFR Part 2. If no claim of confidentiality accompanies the information when it is received by EPA, it may be made available to the public without further notice to the commenter.

Mr. Richard Wilson is hereby designated as the Presiding Officer of the hearing. He will be responsible for maintaining order, excluding irrelevant or repetitious material, scheduling presentations and notifying participants of the time at which they may appear.

The hearing will be conducted informally. Technical rules of evidence will not apply. A written transcript of the hearing will be taken. Anyone desiring to purchase a copy of this transcript should make arrangements individually with the court reporter recording the hearing.

Dated: March 3, 1983.

Kathleen M. Bennett,

Assistant Administrator for Air, Noise and Radiation.

[FR Doc. 83-5952 Filed 3-7-83; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 123

[SW-9-FRL 2316-8]

Nevada's Application for Interim Authorization, Phase I and Phase II, Components A and B, Hazardous Waste Management Program

AGENCY: Environmental Protection Agency, Region 9.

ACTION: Notice of public comment period and public hearing.

SUMMARY: Today EPA is announcing the availability for public review of the Nevada application for Phase I and Phase II, Components A and B interim authorization, for the hazardous waste management program, inviting public comment and giving notice that if significant public interest is expressed, EPA will hold a public hearing on the application.

DATE: If significant public interest is expressed in holding a hearing, a public hearing is scheduled for April 22, 1983 at 1:00 p.m. EPA reserves the right to cancel the public hearing if significant public interest in holding a hearing is not communicated by EPA by telephone or in writing by April 6, 1983. EPA will determine by April 11, 1983, whether there is significant interest to hold the public hearing. All written comments on the Nevada Interim Authorization application must be received by the close of business on April 6, 1983.

ADDRESSES: If significant public interest is expressed, EPA will hold a public hearing on Nevada's application for Interim Authorization on April 22, 1983 at 1:00 p.m. at the Washoe County Health Department, 1001 E. Ninth St. Reno, Nevada. Written comments on the application and written or telephone communications of interest in EPA's holding a public hearing on the Nevada application must be sent to: U.S. Environmental Protection Agency, Region 9, Toxics and Waste Management Division, Attention: Gary Lance (T-2-1), 215 Fremont Street, San Francisco, CA 94105, (415) 974-8125. If you wish to find out whether or not EPA will hold a public hearing on the Nevada application based upon EPA's decision that there was significant public interest in such a hearing, write or telephone after April 11, 1983, the EPA contact person listed below. Copies of the Nevada Interim Authorization application are available during normal business hours at the following address for inspection and copying:

Environmental Protection Agency, Region 9, Library Information Center, 215 Fremont Street Room 601, San Francisco, CA 94105

EPA Headquarters Library, 401 M Street, SW., Room 2404, Washington, D.C. 20460

Nevada Division of Environmental Protection, 201 South Fall Street, Carson City, Nevada 89710

FOR FURTHER INFORMATION, CONTACT: Environmental Protection Agency, RCRA State Programs Section, Attn: Gary Lance (T-2-1), 215 Fremont Street, San Francisco, CA 94105, (415) 974-8125.

SUPPLEMENTARY INFORMATION: In the May 19, 1980 **Federal Register** (45 FR 33063) the Environmental Protection Agency promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1975 (as amended), to protect human health and the environment for the improper management of hazardous waste. These regulations include provisions under which EPA can authorize qualified State hazardous waste management programs to operate in lieu of the Federal program. The regulations provide for a transitional stage in which qualified state programs can be granted interim authorization. The interim authorization program is being implemented, in two phases corresponding to the two stages in which the underlying Federal program will take effect.

As noted in the May 19, 1980, **Federal Register**, copies of state submittals for interim authorization are to be available for public inspection and comment. The purpose of this notice is to announce the availability of the Nevada submittal for interim authorization; to invite public comment; and, that if significant public interest is expressed in holding a hearing, to give notice of a public hearing to be held on the Nevada application. A listing and a description of requirements for interim authorization are stated in 40 CFR Part 123, Subpart F.

List of Subjects in 40 CFR Part 123

Hazardous materials, Indian-land, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernment relations, Penalties, Confidential business information.

Authority

This notice is issued under the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 et seq. and implementing regulation: in 40 CFR Part 123, Subpart F.

Dated: February 18, 1983.

Sonia F. Crow,

Regional Administrator.

[FR Doc. 83-5780 Filed 3-4-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 77

Sanctions Applicable to Letter of Credit Administration

AGENCY: Office of the Secretary, HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing regulations that would govern the imposition of sanctions against recipient organizations holding letters of credit under programs administered by the Department of Health and Human Services. The regulations would describe the conditions which may prompt the imposition of sanctions and would establish uniform procedures for providing affected recipient organizations: (1) Adequate notice of the grounds upon which proposed sanctions are based, (2) an opportunity to respond to the factual and legal bases of the proposed sanctions, and (3) a reasoned decision that articulates the factual and legal bases of the Department's final decision. We believe that these uniform procedures would be useful both as a sound management tool for the Department and as a guide to grantees and contractors.

DATE: To assure consideration, comments should be received by May 9, 1983.

ADDRESS: Address comments in writing to: David V. Dukes, Deputy Assistant Secretary, Finance Office of the Assistant Secretary for Management and Budget, Department of Health and Human Services Room 705D, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C. 20201. Comments will be available for public inspection, beginning approximately two weeks after publication, in Room 705D of the Department's offices at 200 Independence Ave., SW., Washington, D.C. 20201 on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and will respond to them in the preamble to that rule.

FOR FURTHER INFORMATION, CONTACT: David V. Dukes, (202) 245–7084.

SUPPLEMENTARY INFORMATION:

Background

For many years the Department has administered the disbursement of federal funds to recipients of grant awards and contracts under numerous programs by means of the letter of credit system. In fiscal year 1981 alone, $80.4 billion under 281 Departmental programs were disbursed through 4555 letters of credit. Under the letter of credit system, recipient organizations are financed by either a Federal Reserve Bank Letter of Credit (FRB–LOC) or a Treasury Financial Communication System-Letter of Credit (TFCS–LOC). Under the FRB–LOC, recipient organizations draw cash advances against their awards directly from the United States Treasury, through letters of credit maintained in Federal Reserve Banks. Under the TFCS–LOC, recipient organizations draw their cash advances against their awards directly from the United States Treasury, through letters of credit maintained by the United States Treasury Disbursing Office. It is the award that constitutes the authorization to draw federal funds, not the letter of credit. The letter of credit is only a payment device that facilitates the transfer of federal funds from the Treasury to the individual grantee or contractor. Basic authorities governing withdrawal of federal cash under the letter of credit system were issued by the Treasury Department in its Circular No. 1075, now codified at 31 CFR Part 205 and in the Treasury Fiscal Requirements Manual. The Department has published a compendium of policies and procedures for grantees and contractors whose awards under Departmental programs are paid by letter of credit called the "Departmental Federal Assistance Financing System Policy and Procedures Manual for Recipients" (DFAFS Manual). Within the Department, administration of the letter of credit process lies largely with the Departmental Federal Assistance Financing System, but it is also shared with the Assistant Secretaries for Health and Human Development Services, and the Administrator of the Health Care Financing Administration.

While the Department has on numerous occasions identified instances in which recipient organizations have violated pertinent requirements regarding the administration of their letters of credit, there has never been a uniform Departmental procedure for resolution of letter of credit disputes or imposition of remedial steps were circumstances warrant such action. We believe that the adoption of uniform procedures that would govern the imposition of sanctions against recipient organizations that hold letters of credit would be useful both as a sound management tool for the Department and as a guide to apprise grantees and contractors of procedures that may affect the manner by which they have federal funds disbursed to them under awards issued by this Department.

The proposed rules seek to draw a balance between the need to establish and formalize administratively feasible procedures that will protect the integrity of the letter of credit system, while insuring that parties potentially affected by adverse Departmental action have an adequate opportunity to be advised of the Department's concerns regarding letter of credit administration, to respond to the Department's concerns, and to have a reasoned decision that fully sets forth the grounds for the disposition of the dispute. These regulations would not govern a recipient organization's entitlement to the grant or contract underlying its letter or credit nor would they govern the suspension or termination of grant awards since Departmental regulations already provide for these procedures. Similary, any decision reached by the Department under these regulations would relate only to a grantee's obligations under its letter of credit and would not determine the grantee's ultimate liability with respect to improperly spent funds or other misconduct.

The Proposed Rule

1. *Conditions that may prompt remedial action.*—The proposed rule sets forth five conditions, any one of which may prompt remedial action by the Department against a grantee. These are:

(1) A recipient organization draws funds through its letter of credit in excess of the aggregate grant award or contract authority currently available to it. Thus, for example, should a grantee have aggregate grant award authority of $50 million for all Departmental programs in which it participates, but it draws $60 million from its letter of credit, it would be subject to remedial action notwithstanding the fact that it may be within permissible drawing limits for several of its individual grants.

(2) A recipient organization draws Federal funds for a particular program in excess of currently available grant award or contract authority for that program even though aggregate award authority may not have been exceeded.

(3) A recipient organization fails to file in a timely fashion all reports and other data required by the Department in connection with its grant awards, contracts, or letters of credit. This provision would encompass not only the pertinent requirements contained in Chapter VI of the DFAFS Manual and 45 CFR Part 74 in general, but also those requirements currently set forth by

specific program regulations necessary for the processing of individual grant awards. Thus, failure of a State agency to file a quarterly expenditure report under its Medicaid program as required by 45 CFR 201.5 may sufficiently hinder the grant award process as to warrant Department action to protect outstanding letter of credit authority available to the State under that program.

(4) A recipient organization accumulates, through the letter of credit system or otherwise, excess amounts of Federal funds relative to its actual and immediate disbursement requirements. This requirement is also set forth in Treasury Department regulations at 31 CFR 205.6. For those programs under which Federal funds are disbursed on a checks paid or delayed draw system, this issue should not arise since any cash on hand would be unauthorized under these payment systems.

(5) A recipient organization's cash management system fails to comply with well recognized accounting principles or Departmental regulations, or otherwise demonstrates irregularities, misrepresentations, fraud or abuse in its operation. While this condition is broadly stated, it necessarily reflect the difficulty in attempting to compile a complete list of cash management failures by recipient organizations that pose a threat to the integrity of the letter of credit system and, therefore, warrant remedial action by the Department. This requirement would include cash management irregularities such as falsifying expenditure reports or violations of Treasury Department regulations.

2. *Remedial actions available to the Department.*—The proposed rule sets forth several sanctions that the Department may impose against recipient organizations once it identifies the existence of any of the conditions described above:

(1) The Department may place special limits, restrictions or controls upon the recipient organization's use of the letter of credit. For example, if a recipient organization fails to adhere to proper cash management principles in administering its letter of credit, the department may place the organization on a working capital advance method. Similarly, where the Department determines that a recipient organization is carrying over indefinitely Federal funds required through its letter of credit, it may determine that the organization should instead have a monthly dollar ceiling for the expenditure of its federal funds. Or, the Department may require more frequent drawdowns to correlate with disbursements.

(2) The Department may require more frequent or more detailed financial reporting from the recipient organization. For example, the Department might conclude that more frequent than quarterly reporting by a grantee would be needed to assure the proper disbursement of federal funds, or that a grantee should identify summary expenditures to be made for each major program during a quarter.

(3) The Department may suspend, reduce, or terminate a recipient organization's use of its letter of credit. Suspension constitutes a temporary cessation of an organization's access to the letter of credit system. Under this remedy, the organization's letter of credit remains in force, but is rendered inoperative until the issue that prompted the suspension is resolved. A reduction in a letter of credit might occur when the Department identifies a need to recapture Federal funds that have been improperly drawn by a grantee. Termination of a letter of credit would occur when the Department has concluded that a recipient organization has so abused the letter of credit system that removal of the organization from the system is the only viable method of disbursing grant funds with some assurance that the funds will be properly expended. For example, should the Department conclude that a grantee's conduct under its letter of credit demonstrates that there is a need to correlate the grantee's draws of Federal funds more closely with specific grant expenditures than current letter of credit requirements permit, the Department may choose to change the payment mechanism available to the grantee to either a Treasury check payment system or a working capital advance system. These payment systems would enable the Department to monitor closely the relationship of specific payments of Federal funds with specifically approved grant expenditures. These regulations would not apply to the letter of credit terminations that occur because a grantee does not meet threshold criteria for use of a letter of credit. Thus, Department regulations (45 CFR 74.93(a)(1)) already specify that a grantee must have continuing relationship with the Department for at least a year and be receiving at least $120,000 in cash advances annually. These factors are unrelated to inquiries regarding a grantee's improper use of its letter of credit and, as such, are outside the concerns addressed by these regulations.

Because the kinds of cash management issues that give rise to remedial action by the Department are so varied, it is impossible to catalogue each kind of issue that could give rise to a specific remedy. The particular facts govern the selection of the most appropriate remedy in any given case. There are, however, two overriding criteria that govern: (1) The severity of the cash management problem demonstrated by the recipient organization, and (2) the extent to which the Department perceives a substanial threat to the integrity of the letter of credit system and the protection of Federal grant or contract funds.

3. *Procedures applicable to remedial actions.*—In designing procedures to impose sanctions, our intent is to fashion a system that provides basic procedural fairness through an administratively efficient procedure. We are mindful that the courts have consistently held that there is no single procedure or formula that will satisfy minimum due process requirements in every situation. As the Supreme Court stated in *Morrissey* v. *Brewer*, 408 U.S. 471, 482 (1972), "It has been said so often by the Court and others as not to require citation of authority that due process is flexible and calls for such procedural protections as the particular situation demands." These protections depend generally on the importance of the interests involved, the degree of reliability in which the procedures result, and the cost and administrative burden which the procedure entails. *Mathews* v. *Eldridge*, 424 U.S. 319 (1976); *Gray Panthers* v. *Schweiker*, 652 F. 2d 146 (D.C. Cir. 1980).

It is also axiomatic that the fundamental requirement of due process is "the opportunity to be heard at a meaningful time and in a meaningful manner." *Armstrong* v. *Manzo*, 380 U.S. 545, 552 (1965); *Eldridge, supra*, at 334. We perceive this requirement, at a minimum, to include three elements. First, a party must be given notice of the reasons for a governmental action affecting its interests. Second, the party must be given an opportunity to present its case in opposition to the Government's proposed action. And third, there must be a reasoned decision which states the reasons for the determination and indicates the law and the facts upon which the decisionmaker relied. *Goldberg* v. *Kelley*, 397 U.S. 254 (1970). *Greater Boston Television Corporation* v. *F.C.C.*, 444 F. 2d 841, 850 (1970), *cert. denied*, 403 U.S. 923 (1971). Thus, within the broad limits as defined by the courts, there is, we believe, substantial discretion and flexibility to

design a procedure that balances, on the one hand, the interests of a grantee to a full and fair airing of the issues with, on the other hand, the administrative needs of the Department. In light of these principles, we are proposing procedures that would generally require the Department, before it implements its decision to take remedial actions against a recipient organization, to provide the organization with notice, an opportunity to respond, and a reasoned decision on the matter in dispute. We propose that a recipient organization should be notified of potential adverse action at least 30 days before implementation of the decision. As the notice would fully set forth both the legal and factual bases of the Department's initial conclusions, we believe that affected parties should not need more than 30 days within which to furnish the Department with a written response stating the legal and factual reasons why the Department should not impose the proposed remedial action.

We are proposing to restrict parties generally to written submissions for three reasons. First, we believe that the issues that underlie letter of credit disputes may be amply articulated in writing. Second, since the credibility of witnesses should not be an issue in determining the appropriateness of the proposed Departmental action, an oral hearing would not materially enhance the decision making process, provide the party any additional protection, or reduce the risk of an incorrect decision. Third, the conduct of oral hearings in every case of disputes between the Department and recipient organizations could be prohibitively expensive and would render the decision making process unnecessarily slow.

Although oral hearings would not ordinarily contribute materially to a full and fair resolution of letter of credit disputes, we do not wish to foreclose all opportunities for an oral presentation by the recipient organization or by Department employees. In some cases, the presiding officer may find the written submissions confusing or incomplete and desire a hearing for the purpose of clarifying them. For this reason, we are proposing that should the presiding official determine that his ability to resolve the matter would be substantially enhanced by an oral presentation of the issues, he may convene an informal conference of the parties. The scope of the conference would be determined in advance by the presiding official. Any such conference would be transcribed by the Department and become part of the record. We propose to leave the judgment for determining the need for an informal conference solely with the presiding official primarily for two reasons. First, as described above, the nature of letter of credit disputes is such that we expect it to be the exception rather than the rule that the oral presentation of issues will materially assist the final decision making process. Second, if informal conferences were conducted as a matter of right in each case, the attendant expenditure of time and resources could be unacceptably costly in comparison to the possible benefits of such proceedings.

The Departmental official having responsibility for rendering final decisions in the disputes governed by these proposed regulations will vary according to the Departmental component that has primary responsibility for the administration of the letter of credit in dispute. Because the large bulk of letter of credit administration within the Department lies with DFAFS, final decisions on letter of credit disputes within its jurisdiction will rest with the Assistant Secretary for Management and Budget or his designee. Disputes involving other letters of credit, such as those administered by the Health Care Financing Administration for the Medicare program (42 U.S.C. 1395 *et seq.*), would be resolved by the HCFA Administrator or her designee. Similarly, the Assistant Secretary for Health or his designee would issue final decisions under matters relating to the Indian Self Determination Act (25 U.S.C. 450 *et seq.*).

The proposed rules set forth certain basic elements regarding the final decision making process that are designed to assure the fairest possible decision:

(1) The final decision maker will have the authority to affirm, modify, or reverse the initial determination that sanctions should be imposed. By giving the final decision maker the added latitude to modify an initial decision, rather than simply affirm or reverse, we believe that the final decision may more accurately achieve the most equitable result that otherwise would not be possible. For example, the decision maker may conclude that an initial decision to terminate a letter of credit is too severe to remedy a particular weakness in the grantee's letter of credit administration but that some remedy is necessary to protect the integrity of the letter of credit system. By permitting the final decision maker to conclude that a short term suspension of the letter of credit is the most prudent solution, the final decision may reflect that conclusion without having to accept the extremes of termination or no remedy at all.

(2) The final decision will be based solely on the materials presented to the final decision maker during the course of the review process. These materials would include the Department's notice to the recipient organization and accompanying documents, the organization's response and accompanying documents, the Department's reply and its accompanying documents, and the record of any informal conference. Thus, the final decision will be based solely on a record that is available to the affected parties and not on the basis of *ex parte* communications or information not known to the recipient organization.

(3) The final decision will be in writing and will set forth the rationale for the decision.

(4) The final decision maker will be an individual who was not involved in the initial decision to seek remedial action against the recipient organization. No person involved in the initial decision would be responsible for making the final decision. We believe that this, too, comports with basic principles of fairness by separating the "prosecutorial" and "adjudicatory" functions pertinent to the decision making process.

4. *Imposition of sanctions in emergency situations.*—The proposed rules would ordinarily provide recipient organizations with notice, opportunity for comment, and a written decision prior to the imposition of any sanction. We would expect these procedures to be used in the vast majority of situations that pose a need for remedial action. Situations arise, however, that may require immediate action by the Department to assure the integrity of the letter of credit system and the protection of the Federal government's assets. For example, the Department may learn of what it believes to be misconduct by a grantee of such a nature that it could irrevocably risk the loss of grant funds if not immediately remedied. This might occur in the case of a grantee experiencing severe financial hardship with a poor case management record. Should the Department conclude that it faces a substantial likelihood of losing Federal grant funds without a realistic chance for their recovery, the proposed rules would permit the Department to take immediate steps to impose a sanction, such as the suspension of the grantee's letter of credit, pending a fuller examination of the facts necessary for a resolution of the issue once the sanction is in effect. In such cases, the affected

grantee would then be entitled to the same notice, opportunity to be heard, and written decision that under normal circumstances would be furnished prior to the imposition of a sanction. We wish to emphasize that the emergency situations that may give rise to this alternative procedure occur infrequently and involve only recipient organizations that have the most serious cash management difficulties and with whom the Department does not have a continuing relationship under its programs. Even in these cases, however, the proposed rule provides that a recipient organization against whom a sanction is imposed without prior notice be notified orally within one business day of the sanction's imposition and in writing within seven business days. Moreover, because of the seriousness of this remedy, and the hope of minimizing the amount of time that a recipient organization would be subject to the sanction without an oportunity to be heard, we are proposing that the Department be required to reach a final decision within 20 calendar days after receiving the organization's response to the notice of the proposed sanction.

Impact Analysis

Executive Order 12291

We have determined that these proposed regulations do not meet the criteria for a major rule that are set forth in section 1(b) of Executive Order 12291. That is, the proposed regulations would 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, government agencies, or geographic regions; or

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

We have made this determination because the proposed rules would not require Department grantees or other recipient organizations to alter the manner in which they administer their grant programs or contracts. These regulations would simply provide all recipient organizations with a well defined set of procedures that should facilitate their requests for an orderly review of potentially adverse determinations affecting their grant or contract administration. Additionally, these regulations would remove the uncertainty that now exists among recipient organizations as to the process for resolution of disputes they may have with the Department concerning cash management issues.

Regulatory Flexibility Act.—We have reviewed this regulatory initiative in light of the Regulatory Flexibility Act (5 U.S.C. ch. 6), and we have concluded that it will not have a significant economic impact on a substantial number of small businesses, organizations, or government jurisdictions. As discussed above, the proposed regulations would not impose any new requirements on recipient organizations who receive federal funds through the letter of credit system. Indeed, requirements for grant administration would remain wholly unaffected by these regulations. We believe that the proposed regulations would, in fact, benefit holders of Departmental letters of credit because for the first time grantees would have available to them well defined procedures that expressly address the resolution of disputes that often occur with the Department concerning letter of credit administration.

List of Subjects in 45 CFR Part 77

Credit, Grants administration, Penalties.

45 CFR is amended by adding a new Part 77 as set forth below:

PART 77—SANCTIONS APPLICABLE TO LETTER OF CREDIT ADMINISTRATION

Sec.

77.1 Purpose.
77.2 Scope.
77.3 Conditions that may give rise to sanctions.
77.4 Sanctions.
77.5 Sanction procedures.

Authority: 5 U.S.C. 301.

§ 77.1 Purpose.

Letters of credit with the United States Treasury, issued by the Department to States or other grantees and contractors, are a convenient means for disbursing Federal funds to recipients of grant awards or contracts (recipient organizations) under the programs of this and other Executive Departments. The sound and efficient operation of the letter-of-credit system is dependent in large part upon the honesty, good faith, and responsible financial management of recipient organization that receive funds pursuant to letters of credit. This part sets forth conditions that may prompt the Department to seek remedial action against a recipient organization operating under a letter of credit and the procedures that will be used to reach a final decision regarding the imposition of a sanction against a recipient organization.

§ 77.2 Scope.

The regulations in this part apply to all recipient organizations under any program administered by the Department through which the organization receives Federal funds under a letter of credit.

§ 77.3 Conditions that may give rise to sanctions.

If the Department determines that any of the following conditions is present in a recipient organization's administration of a letter of credit, it may impose sanctions against the organization:

(a) A recipient organization draws Federal funds through its letter of credit in excess of the aggregate grant award or contract authority currently available to it.

(b) A recipient organization draws Federal funds for a particular program in excess of currently available grant award or contract authority for that program, even though the organization may not have exceeded its aggregate grant award or contract authority.

(c) A recipient organization fails to file in a timely fashion all reports and other data required by the Department in connection with its grant awards, contracts, or letter of credit.

(d) A recipient organization accumulates, through its letter of credit or otherwise, excess amounts of Federal funds relative to its actual and immediate disbursement requirements.

(e) A recipient organization's cash management system fails to comply with well recognized accounting principles or Departmental regulations or otherwise demonstrates irregularities, misrepresentations, fraud, or abuse in its operation.

§ 77.4 Sanctions.

If, after the conclusion of the procedures set forth in § 77.5, the Department finds that one or more of the conditions set forth in § 77.3 is or has been present, the Department may impose the following sanctions against a recipient organization's use of its letter of credit:

(a) The Department may place special limits, restrictions, or controls upon the recipient organization's use of its letter of credit.

(b) The Department may require more frequent or more detailed financial reporting from the recipient organization.

(c) The Department may suspend, reduce, or terminate the recipient organization's use of its letter of credit.

§ 77.5 Sanction Procedures.

(a) Except as provided in paragraph (b) of this section, the Department will use the following procedures whenever it seeks the imposition of a sanction specified in § 77.4.

(1) *Notice.*—Prior to imposing a sanction, the Department will provide the recipient organization written notice of its intended action setting forth both the legal and factual reasons therefor. Notice may be provided by certified or express mail, TWX, telegram, delivery, or similar means.

(2) *Opportunity to respond.*—(i) The recipient organization has 30 days after receipt of the notice in which to submit to the Department a written statement setting forth any legal and factual reasons why it believes the proposed sanction would be inappropriate. If no response is received by the Department within the 30-day period, the Department may make the proposed sanction effective immediately. If a response opposing imposition of the sanction is received from the recipient organization within the 30-day period, no sanction will be imposed until a final decision has been reached under paragraph (a)(3). (ii) The Department may prepare a written reply to the recipient organization's response. Any such reply will be forwarded to the deciding official together with the notice sent to the recipient organization and the organization's response, and a copy of the reply will be served on the recipient organization.

(3) *Departmental decision.*—The Department's decision to impose a sanction under this part will be made by an official of the Department who had no involvement with the initial determination to seek to impose a sanction. The deciding official may affirm, reverse, or modify the initial determination. In making his decision, the official will consider only the notice provided by the Department, the recipient organization's statement, the Department's reply, together with any other documents attached to them, and statements at any informal conference held pursuant to paragraph (a)(4) of this section. The official's decision will be provided to the recipient organization in writing and will constitute the Department's final administrative action on the matter.

(4) *Informal conference.*—If, in the judgment of the official designated to make a final decision, it would materially enhance his ability to resolve the matters in dispute, he may convene an informal conference to question or hear an oral presentation by the parties. If an informal conference is convened, it shall be transcribed.

(5) *Effect of decision.*—The decision in a proceeding under this section affects only the recipient organization's obligations related to its letter of credit and does not determine the organization's ultimate liability with respect to improperly spent funds or other misconduct.

(b) *Emergency sanctions.*—(1) Should the Department determine that it cannot adequately protect assets of the Federal government available to a recipient organization under its letter of credit without the imposition of a sanction prior to the procedures specified in paragraph (a) of this section, it may immediately impose the sanction subject to the subsequent completion of those procedures.

(2) Where the Department has imposed a sanction as described in paragraph (b)(1) of this section, it will notify the recipient organization orally of the sanction within one business day of its imposition and in writing within seven business days of its imposition. The written notice will conform to that described in paragraph (a)(1) of this section.

(3) After receipt of the written notice, the recipient organization will have the same opportunity to respond as described in paragraph (a)(2)(i) of this section.

(4) The Department will issue a final decision in writing no later than twenty days following receipt of any response submitted by the recipient organization.

Dated: February 1, 1983.

Richard S. Schweiker,

Secretary.

[FR Doc. 83-5850 Filed 3-7-83; 8:45 am]

BILLING CODE 4150-04-M

INTERSTATE COMMERCE COMMISSION

49 CFR Ch. X

[Ex Parte No. 444]

Electronic Filing of Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Interstate Commerce Commission regulations require filing of tariffs only in printed form. The Commission is considering establishing rules and procedures to permit parties wishing to do so to file tariffs electronically. Commission regulations requiring printed tariffs may be impeding the progress of other tariff issuers and users that wish to avail themselves of the efficiencies made possible by computer technology. This advance notice seeks comments from interested parties on whether this is a timely and practical idea; on the technical standards involved in implementing an electronic tariff filing system; on the form, if any, in which the Commission should prescribe, maintain and make accessible electronically filed tariffs; and on whether the Commission should transmit electronically filed tariffs to users.

DATE: Comments should be submitted by April 22, 1983.

ADDRESS: An original and 10 copies should be sent to: Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: W. Paul Geisenkotter, Section of Tariffs, Bureau of Traffic (202) 275-7739.

SUPPLEMENTARY INFORMATION: At present, tariffs must be filed with the Interstate Commerce Commission in printed form. While a limited number of tariffs are transmitted electronically and filed in print-out form, most tariffs are printed and then mailed to the Commission. The Commission has no ability or procedures to accept electronically filed tariffs, that is, tariffs generated by a computer and transmitted directly to another computer via an electronic medium such as a telephone or dedicated line, microwave transmission system, or computer-readable magnetic tape.

While the printed tariff system poses no special problems for many of the parties issuing and using tariffs, and may continue to provide an acceptable service to some issuers and users in the future, Commission regulations requiring printed tariffs may be impeding the progress of other tariff issuers and users that wish to avail themselves of the efficiencies made possible by computer technology. The Commission believes some tariff issuers and users that have computerized tariff systems continue to maintain duplicate printed tariff systems solely because of Commission regulations, and thus are incurring needless expense. Other tariff issuers and users may be delaying conversion from printed to electronic tariffs because of this expense.

In addition to the expense incurred when tariff issuers and users must maintain, or contemplate maintaining, redundant systems to deal with both electronic and printed tariffs, the use of printed tariffs causes problem in two other areas. First, the transfer of tariff

information in printed form through the mails results in delay between the time an issuer decides upon a tariff change and the time that change can take effect. Electronic filing of tariffs can shorten this period without affecting the time available to users to react to the change. Second, the volume of printed tariff materials—which has increased with the level of competition brough about by regulatory reform—is itself an impediment to the efficient functioning of the transportation marketplace because users must spend considerable time and effort to learn the full range of price and service options available. The availability of tariff data in electronic form may increase the amount of usable information available and thereby allow the marketplace to function more efficiently.

The Commission is considering permitting and encouraging the electronic filing of tariffs on a voluntary basis. Adopting electronic tariff filing would, we think, foster rather than replace, private initiatives already underway regarding electronic transfer of tariff information. The Commission believes it can foster such private initiatives by relieving issuers and users who chose to use electronic tariff systems of the need to generate separate paper tariffs for the Commission, and by making electronically filed tariff data available in consolidated form. The Commission hopes to be able to adopt standards and formats for electronic tariffs developed by the private sector. We expect private entrepreneurs will develop and market services to help issuers and users to file, retrieve, and analyze tariff information electronically.

The Commission solicits comments from interested parties concerning the desirability of providing for voluntary electronic filing of tariffs. We especially seek comments on the following subjects:

(1) Is electronic transmission of tariffs practical and timely? That is, would a significant number of carriers and shippers wish and be able to make use of computer technology for this purpose?

(a) What are the advantages and disadvantages of transmitting, receiving and storing tariffs electronically?

(b) To what extent are shippers and carriers now capable of receiving, transmitting and storing tariffs electronically? If electronic filing is approved, when would: (i) Carriers; and (ii) shippers start to use it?

(2) If the Commission decides to implement an electronic tariff filing system, how should the system be established?

(a) What steps already have been taken toward development of electronic transmission technical standards, formats, and other material by: (i) Individual carriers or carrier groups; (ii) individual shippers or shipper groups; (iii) others?

(b) Are uniform formats and standards for electronic tariff filing necessary or desirable? (i) If so, should the Commission publish technical standards, formats, and other detailed requirements, or should the Commission adopt standards developed, or to be developed, by private initiative? (ii) If not, can the Commission allow issuers to file tariff data in any format together with a program enabling the Commission to print hard copy (e.g., paper tariffs, microfiche or microfilm) of a tariff that meets the Commission's standards governing tariff content?

(3) Should the Commission receive and maintain tariff information that is filed electronically, or should we seek statutory changes permitting tariff information to be transmitted directly to users with notice to the Commission concerning where the information is available?

(a) If tariff information is filed electronically with the Commission: (i) To what extent should the Commission provide a library service similar to that it now provides with printed tariffs and what would be the estimated cost for the Commission to acquire (by purchase, time sharing, etc.) access to the required equipment? (ii) Would it serve a useful purpose for the Commission to offer to transmit periodically a consolidated version of the electronic tariff filings it receives to users, and vendors offering services to users, and what would be the estimated cost for the Commission to acquire (by purchase, time sharing, etc.) access to the required equipment?

(b) If we permit tariff information to be transmitted directly from issuers to users without requiring that it also be filed at the Commission: (i) Who should be required to bear the cost of transmission; (ii) how could users not equipped to receive electronic information gain access to the data, (e.g., should paper copies continue to be available on request from issuers or the Commission?); and (iii) how could the Commission gain access to data on an as-needed basis to fulfill its statutory obligations, and how could the Commission be assured that tariff records would be retained for the prescribed period of time?

(4) If the Commission provides facilities to receive tariff information electronically, to provide library services for electronic tariffs, or to transmit information electronically, should tariff issuers and users pay user fees based upon the cost of providing the equipment?

In addition to responses to the preceding questions, we solicit comments and recommendations from all parties, especially tariff users, on any other matter relevant to the establishment of an effective electronic tariff filing system.

It does not appear that this proposal will significantly affect the quality of the human environment or the consumption of energy resources.

Dated: March 2, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre, Simmons and Gradison. Commissioner Simmons did not participate.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-5815 Filed 3-7-83; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 48, No. 46
Tuesday, March 8, 1983

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Rulemaking; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of a meeting of the Committee on Rulemaking of the Administrative Conference of the United States, to be held at 10:00 a.m., Tuesday, March 22, 1983, at 2120 L Street, NW., Washington, D.C. The meeting will be held on the Lower Level, FTC Hearing Room No. 3.

The committee will consider possible recommendations based upon Professor Ellen R. Jordan's study of agency use of the administrative Procedure Act's "good cause" exemptions from procedural requirements that apply to agency rulemaking. At a meeting on February 8, 1933, the committee tentatively agreed that post-promulgation notice and comment would be desirable for some classes of summarily-adopted rules.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least two days prior to the meeting. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during or after the meeting.

For further information concerning this meeting, contact Michael W. Bowers, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., Suit 500, Washington, D.C. 20037. (Telephone: (202) 254–7065.) Minutes of the meeting will be available on request.

Dated: March 1, 1983.

Richard K. Berg,

General Counsel.

[FR Doc. 83–5824 Filed 3–7–83; 8:45 am]

BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 83–003N]

National Advisory Committee on Meat and Poultry Inspection; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that a meeting of the National Advisory Committee on Meat and Poultry Inspection will be held on April 13 (beginning at 10 a.m.), and April 14, 1983 (beginning at 9 a.m.), in the Departmental Auditorium, Conference Room B, 12th Street and Constitution Avenue, NW., Washington, DC.

The purpose of the Committee is to advise the Secretary of Agriculture regarding certain issues pertaining to the meat and poultry inspection program, pursuant to sections 7(c), 24, 205, and 301(a)(4) of the Federal Meat Inspection Act (21 U.S.C. 607(c), 624, 645, and 661(a)(4)) and sections 5(a)(4), 8(b), and 11(e) of the Poultry Products Inspection Act (21 U.S.C. 454(a)(4), 457(b), and 460(e)). The meeting will include a discussion of the following topics:

1. Cured Pork Products (Protein Fat Free).
2. Residue Control Program.
3. Legislative Initiatives (Update).
4. Poultry Post-Mortem Inspection.
5. Cadmium—Kidney Removal from Mature Poultry.
6. Ground Pork Standard.
7. Exemption Study.
8. 1984 Budget.

The meeting is open to the public on a space available basis. Comments of interested persons may be filed with the Committee before or after the meeting, and should be sent to Linda Wood, Director, executive Secretariat, Room 335–E, Administration Building, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC 20250, (202) 447–3002.

Done at Washington, D.C., on March 2, 1983.

Donald L. Houston,

Vice Chairman.

[FR Doc. 83–5833 Filed 3–7–83; 8:45 am]

BILLING CODE 3410–DM–M

Soil Conservation Service

Dewitt Creek Watershed, Indiana; Intent To Deauthorize Federal Funding

AGENCY: Soil Conservation Service, USA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Dewitt Creek Watershed project, Lawrence County, Indiana.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, State Conservationist, Soil Conservation Service, 5610 Crawfordsville Road, Suite 2200, Indianpolis, Indiana 46224, telephone 317–248–4350.

SUPPLEMENTARY INFORMATION: A determination has been made by Robert L. Eddleman that the proposed works of improvement for the Dewitt Creek Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Robert L. Eddleman, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and

federally assisted program and projects is applicable)

Robert L. Eddleman,

State Conservationist.

February 25, 1983.

[FR Doc. 83-5831 Filed 3-7-83; 8:45 am]

BILLING CODE 3410-16-M

Hall-Flat Creek Watershed, Indiana; Intent To Deauthorize Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Hall-Flat Creek Watershed project, Dubois County, Indiana.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, State Conservationist, Soil Conservation Service, 5610 Crawfordsville Rd., Suite 2200, Indianapolis, Indiana 46224, telephone 317-248-4350.

SUPPLEMENTARY INFORMATION: A determination has been made by Robert L. Eddleman that the proposed works of improvement for the Hall-Flat Creek Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Robert L. Eddleman, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Robert L. Eddleman,

State Conservationist.

February 25, 1983.

[FR Doc. 83-5829 Filed 3-7-83; 8:45 am]

BILLING CODE 3410-16-M

North Cedar Creek RC&D Measure, Iowa; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the North Cedar Creek RC&D Measure, Clayton County, Iowa.

FOR FURTHER INFORMATION CONTACT: William J. Brune, State Conservationist, Soil Conservation Service, 693 Federal Building, 210 Walnut Street, Des Moines, IA 50309, telephone 515-284-4260.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Willian J. Brune, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan for water quality management and critical area treatment. The planned works of improvement include terraces, grade stabilization structures, streambank protection, waste management system, contour strip cropping, conservation tillage systems, timber stand improvement and fencing.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting William J. Brune.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: February 25, 1983.

William J. Brune,

State Conservationist.

Finding of No Significant Impact for North Cedar Creek RC&D Measure, Clayton County, Iowa

Introduction

North Cedar Creek is a Federally assisted action authorized under Section 102 of the Food and Agriculture Act of 1962 (Pub. L. 87-703) and the Soil Conservation Act of April 27, 1935 (16 U.S.C. 590 a-f). Sponsors of this measure are the Iowa Conservation Commission and the Clayton County Soil Conservation District. An environmental evaluation was conducted in consultation with local, State and Federal agencies along with other interested organizations and individuals. Data developed during the evaluation is available for review at the following location: U.S. Department of Agriculture, Soil Conservation Service, 693 Federal Building, 210 Walnut Street, Des Moines, IA 50309.

Recommended Action

North Cedar Creek is a trout stream in Clayton County in northeast Iowa. Sediment and attached pollutants (nutrients and pesticides) from cropland sheet erosion are the major water quality problems. Gully erosion and streambank erosion also contribute sediment. Livestock waste runoff reaches the stream.

The measure plan includes the installation of conservation practices for water quality management and critical area treatment within the 3,220 acre drainage area of North Cedar Creek.

Planned works of improvement include terraces, grade stabilization structures, streambank protection, waste management system, contour strip cropping, conservation tillage systems, timber stand improvement and fencing.

All practices except streambank protection will be installed on privately owned land. These practices will be operated and maintained by the landowner on whose land they are applied. Streambank protection will be installed on land owned by the Iowa Conservation Commission. They will also be responsible for the operation and maintenance of this practice.

Planned actions have been reviewed by Federal or State agency personnel along with local interested groups and individuals at public meetings. Measure plans are reviewed through the project Notification and Review System.

Effects of Recommended Action

A biological assessment indicates no habitat of federally-listed threatened and/or endangered species will be affected. The red-shouldered hawk, a state-listed endangered species, is known to nest within five miles of the project area. The hawk could nest on state-owned land along North Cedar Creek. Construction activities will be minimized during the peak nesting period to reduce chances of nest desertion. No long-term impacts on these hawks are anticipated.

No wetlands are present.

Construction of the grade stabilization structures will remove small areas of woody habitat in the uplands. This habitat will be replaced by improved management of existing woody cover near the structure sites. Installation of project measures will improve water quality in the trout stream.

No prime farmland will be taken from production.

The SCS will undertake study of cultural resources in the North Cedar Creek drainage. Studies will begin in 1983. Objectives of field study will include an inventory of cultural resources and testing to determine eligibility to the National Register of Historic Places according to agency procedures (7 CFR 656). Cultural resources determined eligible to the National Register will be protected from adverse project effects.

Alternatives

1. Do nothing—This would not meet sponsors objectives as water quality would continue to deteriorate in North Cedar Creek and critical erosion problems would not be solved.

2. Second alternative is to apply conservation practices on land within drainage area of North Cedar Creek. This would be the most effective means of controlling erosion and improving water quality. It was selected by the sponsors as being the most acceptable. It would help alleviate problems of two objectives listed in the area plan for the Upper Explorerland RC&D Area.

Conclusion

The Environmental Assessment indicates that this federal action will not cause significant local, regional or national impacts on the environment. Therefore, based on these findings, I have determined that an environmental impact statement for North Cedar Creek RC&D measure is not required.

Dated: February 25, 1983.

William J. Brune,

State Conservationist.

[FR Doc. 83-5830 Filed 3-7-83; 8:45]

BILLING CODE 3410-16-M

West Creek Watershed, Indiana and Illinois; Intent To Deauthorize Federal Funding

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83-566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the West Creek Watershed project, Lake County, Indiana, and Kankakee and Will Counties, Illinois.

FOR FURTHER INFORMATION CONTACT: Robert L. Eddleman, State Conservationist, Soil Conservation Service, 5610 Crawfordsville Road, Suite 2200, Indianapolis, Indiana 46224, telephone 317-248-4350.

SUPPLEMENTARY INFORMATION: A determination has been made by Robert L. Eddleman that the proposed works of improvement for the West Creek Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Robert L. Eddleman, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A-95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Robert L. Eddleman,

February 25, 1983.

[FR Doc. 83-5828 Filed 3-7-83; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Order 83-3-19; Docket 41334]

Application of Guy-America Airways, Inc. for Certificate Authority Under Subpart Q

AGENCY: Notice of Order instituting the Guy-America Airways, Inc. Fitness Investigation, 83-3-19, Docket 41334.

SUMMARY: The Board is instituting an investigation to determine the continuing fitness of Guy-America Airways, Inc. to engage in interstate, overseas and foreign scheduled air transportation.

DATES: Persons wishing to intervene in the *Guy-America Airways, Inc. Fitness Investigation* shall file their petitions in Docket 41334 by March 14, 1983.

ADDRESSES: Petitions to intervene should be filed in Docket 41334, and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION: Steven B. Farbman, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, (202) 673-5340.

SUPPLEMENTARY INFORMATION: The complete text of Order 83-3-19 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 83-3-19 to that address.

By the Bureau of Domestic Aviation: March 3, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-5859 Filed 3-7-83; 8:45 am]

BILLING CODE 6320-01-M

[Order 83-3-14; Docket 41329]

Applications of Interamerica Airlines, Inc. for Certificate Authority Under Subpart Q

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order instituting the *Interamerica Airlines, Inc. Fitness Investigation,* 83-3-14, Docket 41329.

SUMMARY: The Board is instituting an investigation to determine the fitness of Interamerica Airlines to engage in the interstate, overseas and foreign charter air transportation of persons, property and mail (except for charters in Alaska and all-cargo charters in Hawaii).

DATES: Persons wishing to intervene in the *Interamerica Airlines, Inc. Fitness Investigation,* shall file their petitions in Docket 41329 by March 17, 1983.

ADDRESSES: Petitions to intervene should be filed in Docket 41329, and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

In addition, copies of such filings should be served on Interamerica Airlines, Inc., the Department of Transportation, the Department of Justice, the Federal Aviation Administration and on any other person filing petitions.

FOR FURTHER INFORMATION CONTACT: Phyllis C. Solomon, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, (202) 673-5340.

SUPPLEMENTARY INFORMATION: The complete text of Order 83-3-14 is available from our Distribution Section, Room 100, 1825 Connecticut Ave. NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 83-3-14 to that address.

By the Bureau of Domestic Aviation: March 2, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-5860 Filed 3-7-83; 8:45 am]

BILLING CODE 6320-01-M

[Order 83-3-17; Docket 31777]

Order To Show Cause; Trans World Airlines, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: Order 83-3-17 Docket 31777.

SUMMARY: The board is issuing an order directing all interested persons to show cause why the certificate of Trans World Airlines, Inc. for Route 147 should not be amended to authorize the foreign air transportation of persons, property and mail between a point or points in the United States, on the one hand, and Barcelona, Spain; Casablanca, Morocco; and a point or points in Austria, on the other.

OBJECTIONS: All interested persons having objections to the board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall, no later than March 17, 1983, file a statement of such objections with the Civil Aeronautics Board (20 copies, addressed to Docket 31777, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428) and mail copies to Trans World Airlines, Inc., the City of Philadelphia, the Greater Philadelphia Chamber of Commerce, and the Departments of State and Transportation. Copies of the objections should also be sent to the Ambassadors of Spain, Morocco and Austria in Washington, D.C.

A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Board will issue an order which will make final the Board's tentative findings and conclusions and issue the proposed certificate.

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5432. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Krevor, (202) 673-5203, Bureau of International Aviation, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: March 2, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-5801 Filed 3-7-83; 8:45 am]

BILLING CODE 6320-01-M

CIVIL RIGHTS COMMISSION

Mississippi Advisory Committee; Commission on Civil Rights Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Mississippi Advisory Committee to the Commission will convene at 4:00p and will end at 7:30p, on March 25, 1983, in the Meridian Room, at the Sheraton Regency, 750 North State Street, Jackson, Mississippi 39201. The purpose of this meeting will be to discuss program plans for Fiscal Years 1983 and 1984.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Mary L. Ramberg, 1514 Gay Street, Jackson, Mississippi 39211 (601) 982-2432 or the Southern Regional Office, Citizens Trust Bank Building, 75 Piedmont Avenue, North East, Room 362, Atlanta, Georgia 30303 (404) 221-4391.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., March 2, 1983.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 83-5804 Filed 3-7-83; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Intitiation of Antidumping Investigation; Fall-Harvested Round White Potatoes From Canada

AGENCY: International Trade Administration, Commerce.

ACTION: Initiation of Antidumping Investigation.

SUMMARY: On the basis of a petition filed with the United States Department of Commerce, we are initiating an antidumping investigation to determine whether fall-harvested round white potatoes from Canada are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether there is a reasonable indication that imports of fall-harvested round white potatoes from Canada are materially injuring, or are threatening to materially injure, a United States industry. The allegations of sales at less than fair value include an allegation that home market sales are being made at less than the cost of production in Canada. Also, critical circumstances have been alleged under section 733(e) of the Act. If the investigation proceeds normally, the ITC will make its preliminary determination on or before March 28, 1983, and we will make ours on or before July 19, 1983.

EFFECTIVE DATE: March 7, 1983.

FOR FURTHER INFORMATION CONTACT: Vincent Kane or Terry Link, 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) 377-5414 or 377-0189.

SUPPLEMENTARY INFORMATION:

Petition

On February 9, 1983, we received a petition filed by counsel on behalf of the Maine Potato Council. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports from Canada of fall-harvested round white potatoes are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (19 U.S.C. 1673) (the Act) and that these imports are materially injuring, or are threatening to materially injure, a United States industry. The allegations of sales at less than fair value include an allegation that home market sales are being made at less than the cost of production in Canada. Also, critical circumstances have been alleged under secion 733(e) of the Act.

The allegation of sales at less than fair value is supported by comparisons of United States prices based on published ex-farm prices on sales of merchandise in the United States with published Montreal market prices on sales made in Canada. In addition, the allegation of sales at less than fair value is further supported by comparing the United States price with the constructed value as developed by the petitioner from published information.

There is also an allegation of sales at less than the cost of production. The cost of production was based on published information.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether a petition sets forth the allegations necessary for initiation of an antidumping investigation and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on fall-harvested round white potatoes and

have found that it meets these requirements.

Therefore, in accordance with section 732 of the Act, we are initiating an antidumping investigation to determine whether fall-harvested round white potatoes from Canada are being, or are likely to be, sold in the United States at less than fair value and whether critical circumstances exist. If the investigation proceeds normally, we will make our preliminary determination by July 19, 1983.

Scope of Investigation

For purposes of this investigation, the term "fall-harvested round white potatoes" covers fall-harvested fresh or chilled round white potatoes as currently classifiable under items 137.20, 137.21, 137.25, or 137.28 of the *Tariff Schedules of the United States*.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided that the ITC confirms 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.

Preliminary Determination by ITC

The ITC will determine by March 28, 1983, whether there is a reasonable indication that imports of fall-harvested round white potatoes from Canada are materially injuring, or are threatening to materially injure, a United States industry. If its determination is negative, this investigation will terminate; otherwise, the investigation will continue according to statutory procedures.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

February 28, 1983.

[FR Doc. 83-5751 Filed 3-4-83; 8:45 am]

BILLING CODE 3510-25-M

Polychloroprene Rubber From Japan; Final Results of Administrative Review of Antidumping Finding

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Final Results of Administrative Review of Antidumping Finding.

SUMMARY: On November 26, 1982, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on polychloroprene rubber from Japan. The review covers three of the five known manufacturers and/or exporters of this merchandise to the United States and the period December 1, 1980 through November 30, 1981. There were no known shipments of this merchandise to the United States during the period and there are no known unliquidated entries.

Interested parties were given an opportunity to submit oral or written comments on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results of review.

EFFECTIVE DATE: March 7, 1983.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Susan Crawford, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 1973, the Treasury Department published in the **Federal Register** (38 FR 35393) an antidumping finding with respect to polychloroprene rubber from Japan. On November 26, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 53442) the preliminary results of its last administrative review of the finding. The Department has now completed that administrative review.

Scope of the Review

Imports covered by the review are shipments of polycholorprene rubber, an oil resistant synthetic rubber also known as polymerized cholorobutadiene or neoprene, currently classifiable under items 446.1521 and 446.2000 of the Tariff Schedules of the United States Annotated.

The review covers three of the five known manufacturers and/or exporters of Japanes polychloroprene rubber to the United States and the period December 1, 1980 through November 30, 1981. There were no known shipments to the United States during the period and there are no known unliquidated entries for these firms. The Department is deferring review of entries of merchandise produced by Toyo Soda or Showa Neoprene and exported by Hoei Sangyo until a subsequent review.

Final Results of the Review

Interested parties were invited to comment on the preliminary results. The Department received no written comments or requests for disclosure or a hearing. Based on our analysis, the final results of our review are the same as those presented in the preliminary results of review, and we determine that, for the period December 1, 1980 through November 30, 1981, the following margins exist:

Manufacturer/exporter	Margin (percent)
Denki	[1]0
Suzugo Corporation	[1]55
Denki/Hoei Sangyo	[1]55

[1] No shipments during the period.

As provided for by § 353.48(b) of the Commerce Regulations, a cash deposit of estimated antidumping duties based on the above margins shall be required on all shipments of Japanese polychloroprene rubber from these firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. For the 2 firms not covered by this or a prior review, the cash deposit rate shall be 55 percent, the highest rate from our last review. For any shipment from a new exporter not covered in this administrative review, unrelated to any covered firm, a cash deposit of 55 percent shall be required. These deposit requirements shall remain in effect until publication of the final results of our next administrative review. The Department intends to conduct the next administrative review by the end of December 1983. The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information during the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 353.53 of the Commerce Regulations (19 CFR 353.53).

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-5750 Filed 3-4-83; 8:45 am]

BILLING CODE 3510-25-M

Subcommittee on Export Administration of the President's Export Council; Closed Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that a closed

meeting of the Subcommittee on Export Administration of the President's Export Council will be held on Friday, March 11, 1983. This meeting is being called on short notice as a continuation of the February 23, 1983 closed meeting. The Subcommittee will complete their review and recommendations on the Export Administration Act at this meeting

The Subscommittee on Export Administration was initially established on June 1, 1976. Executive Order 12399 of December 31, 1982 continued the Subcommittee until September 30, 1984.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act of 1979 that deal with United States policies of encouraging trade with all countries with which the United States had diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

TIME AND PLACE: The meeting will take place from 9:30 a.m. to 1:00 p.m., March 11, 1983, at the Main Commerce Building, Room B-841, 14th Street and Constitution Avenue, NW., Washington, D.C.

AGENDA: *Executive Session.* Discussion of matters properly classified under Executive Order 12356, dealing with matters pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Act.

SUPPLEMENTARY INFORMATION: The Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 2, 1983, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 522b(c)(1) and properly classified under Executive Order 12356.

A copy of the Notice of Determination to close the Subcommittee's meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone (202) 377-4217.

FOR FURTHER INFORMATION CONTACT: Ms. Debbie Kappler, Office of the Assistant Secretary for Trade Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230 (202-377-1455) or Ms. Elisabeth Vermilye, President's Export Council Room 3213 (202-377-1125).

Lawrence J. Brady,

Assistant Secretary for Trade Administration.

[FR Doc. 83-3748 Filed 3-4-83; 8:45 am]

BILLING CODE 3510-25-M

Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes; Villanova University

The following is a consolidated decision on applications for duty-free entry of electron microscopes pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 AM and 5:00 PM in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No. 83-24. Applicant: Villanova University, Villanova, PA 19085. Instrument: Electron Microscope, Model H-600-2 with Accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use of instrument: See Notice on page 2811 in the **Federal Register** of January 21, 1983. Instrument ordered: August 5, 1982.

Docket No. 83-53. Applicant: University of California, San Francisco, School of Medicine, Department of Anatomy, 3rd & Parnassus Avenue, San Francisco, CA 94143. Instrument: Electron Microscope, Model EM 10CA and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of instrument: See Notice on page 54998 in the **Federal Register** of December 7, 1982. Instrument ordered: September 27, 1982.

Docket No. 83-58. Applicant: California Institute of Technology, 1201 East California Boulevard, Pasadena, CA 91125. Instrument: Electron Microscope Model EM 420 and Accessories. Manufacturer: Philips Electronics, The Netherlands. Intended use of instrument: See Notice on page 55987 in the **Federal Register** of December 14, 1982. Instrument ordered: September 27, 1982.

Docket No. 83-61. Applicant: Muhlenberg College, 2600 Chew Street, Allentown, PA 18104. Instrument: Electron Microscope EM 109 and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of instrument: See Notice on page 55988 in the **Federal Register** of December 14, 1982. Instrument ordered: October 18, 1982.

Docket No. 83-68. Applicant: University of California at Davis, School of Medicine, Department of Human Anatomy, Davis, CA 95616. Instrument: Electron Microscope, Model EM 410 and Accessories. Manufacturer: N. V. Philips, Gloeilampenfabrieken, The Netherlands. Intended use of instrument: See Notice on page 56534 in the **Federal Register** of December 17, 1982. Instrument ordered: November 1, 1982.

Docket No. 83-69. Applicant: University of Wisconsin-Madison, 1115 Engineering Research Building, 1500 Johnson Drive, Madison, WI 53706. Instrument: Electron Microscope, Model HB501. Manufacturer: VG Microscopes, United Kingdom. Intended use of instrument: See Notice on page 56533 in the **Federal Register** of December 17, 1982. Instrument ordered: April 23, 1982.

Docket No. 83-70. Applicant: North Carolina State University, P.O. Box 5935, Raleigh, NC 27650. Instrument: Electron Microscope, Model H-800 and Accessories. Manufacturer: Hitachi, Japan. Intended use of instrument: See Notice on page 56534 in the **Federal Register** of December 17, 1982. Instrument ordered: November 1, 1982.

Docket No. 82-226R. Applicant: Cuyahoga County Hospitals, Cleveland Metropolitan General Hospital, 3395 Scranton Rd., Cleveland, Ohio 44109. Instrument: Electron Microscope, Model EM 10-CR. Application is a resubmission, notice of which was published in the **Federal Register** of July 7, 1982 (47 FR 29580). Instrument ordered: April 8, 1982.

Comments: No comments have been received with respect to any of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument to which the foregoing applications relate is a conventional transmission electron microscope (CTEM). The description of the intended research and/or educational use of each instrument establishes the fact that a comparable CTEM is pertinent to the purposes for which each is intended to be used. We know of no CTEM which was being manufactured in the United States either at the time of order of each instrument described above or at the time of receipt

of application by the U.S. Customs Service.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to any of the foreign instruments to which the foregoing applications relate, for such purposes as these instruments are intended to be used, which was being manufactured in the United States either at the time of order or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 83-5886 Filed 3-7-83; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Receipt of Modification Request; Bolt, Beranek and Newman, Inc.

Notice is hereby given that Bolt, Beranek and Newman, Inc., 10 Moulton Street, Cambridge, MA 02238, has requested a modification of Permit No. 400, issued on December 29, 1982 (48 FR 1827), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543).

Permit No. 400 authorizes the taking of gray whales *(Eschrictius robustus)* by harassment to study the behavioral responses to acoustic stimuli. The Permit Holder is requested to include air gun sources, in addition to the simulated OCS noises currently authorized by the permit.

Concurrent with the publication of this Notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235 within 30 days of the publication of this Notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statement and options contained in the request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above modification request are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: March 3, 1983.

R. B. Brumsted,

Acting Chief, Protected Species Division, National Marine Fisheries Service.

[FR Doc. 83-5882 Filed 3-7-83; 8:45 am]

BILLING CODE 3510-22-M

Receipt of Application for Permit; Hubbs-Sea World Research Institute

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: Hubbs-Sea World Research Institute (P167D).

b. Address: 1700 South Shores Road, Mission Bay, San Diego, California 92109.

2. Type of Permit: Scientific Research.

3. Name and Number of Animals: Beluga whale (Delphinapterus leucas),3,670

4. Type of Take:

Potential harassment aerial survey, 1500
Direct harassment sound playback, 2000
Dye marking, 120
Spaghetti tags, 50

5. Location of Activity: Nushagak Bay, Alaska.

6. Period of Activity: One year.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.;

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: March 1, 1983.

R. B. Brumsted,

Acting Chief, Protected Species Division, National Marine Fisheries Service.

[FR Doc. 83-5883 Filed 3-7-83; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council, Its Scientific and Statistical Committee and its Advisory Panel; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The North Pacific Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265, as amended), has established a Scientific and Statistical Committee (SSC) and an Advisory Panel (AP) to assist the Council in carrying out its responsibilities under the Act. The Council, its SSC and AP will hold separate public meetings, but the Council will also meet with the Alaska Board of Fisheries in joint session.

DATES: The Council and the Alaska Board of Fisheries will convene their joint public meeting on Tuesday, March 29, 1983, at approximately 9 a.m., in the Alaska Room of the Westward Hilton Hotel, Anchorage, Alaska, to hear technical reports on the status of the king and tanner crab resources off Alaska, review regulatory proposals to the Board and discuss regulations for 1983. Public testimony will be taken on the regulatory proposals. The Council and the Board will also discuss salmon management for 1983 in light of the current status of the proposed U.S./

Canada salmon interception treaty. The Board and the Council will continue to meet jointly on Wednesday, March 30, to finish discussion of the above items. The Council will meet alone in Room 101 of the Old Federal Building, 605 West Fourth Avenue, from approximately 9 a.m., on Thursday, March 31, until about 3 p.m., on Friday, April 1, 1983, or until Council business is completed. If necessary the meeting may be continued into Saturday, April 2.

The SSC meeting will convene on Monday, March 28, 1983, at approximately 9:30 a.m., and will ajourn at approximately 5 p.m., on Tuesday, March 29, in the 3rd Floor Conference Room of the Old Federal Building, 605 West Fourth Avenue. The AP will convene its meeting on Monday, March 28, at approximately 9:30 a.m., and will adjourn at approximately 5 p.m., in Room 101 of the Old Federal Building, 605 West Fourth Avenue, and may continue into Tuesday, March 29. The meetings may be lengthened or shortened depending upon progress on the agenda items.

Proposed Agenda: Council—A detailed agenda will be sent to the public around March 14, 1983. The Council will review the proposed U.S./Canada salmon interception treaty and any proposed changes. The Council will also review proposals to the Board for salmon management in 1983 and take final action on setting optimum yields and seasons for the 1983 season. The herring plan will also be up for review. The Council will also discuss recommendations of the Herring Working Group and take action on a Marine Resources Company request for an offshore allocation. The Council will review stock status and regulatory proposals for the king and tanner crab fisheries, and will also review a proposed change in the pollock optimum yield in the Western and Central Gulf. The Council will also give its final recommendations concerning the proposed halibut moratorium and will review a draft final report on its contracted study of halibut limited entry systems. Finally, the Council will consider foreign fishing permits. Parts of this meeting may be conducted in joint session with the Alaska Board of Fisheries. SSC and AP agenda items will be the same as that of the Council.

FOR FURTHER INFORMATION CONTACT: North Pacific Fishery Management Council, P.O. Box 3136DT, Anchorage, Alaska 99510, Telephone: (907)–274–4563.

Dated: March 3, 1983.

Richard B. Stone,

Acting Chief, Operations Coordination Group, National Marine Fisheries Service.

[FR Doc. 83-5881 Filed 3-7-83; 8:45 am]

BILLING CODE 3510-22-M

Pacific Coast Groundfish Fishery

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

ACTION: Notice and request for comment.

SUMMARY: This notice acknowledges receipt of three experimental fishing permit applications and announces a public comment period as required in the regulations implementing the Pacific Coast Groundfish Fishery Management Plan. The applicants propose to delay sorting mid-water trawl catches of Pacific whiting and disposing of species prohibited in trawl catches, until the catches are landed. An experimental fishing permit allows a fishing practice which otherwise would be prohibited by Federal regulation.

DATE: Comments on these applications must be received by March 18, 1983.

ADDRESS: Alan W. Ford, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

FOR FURTHER INFORMATION CONTACT: Rodney R. McInnis, Chief of the Resource Management Branch in the Southwest Region; 213–548–2518.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) was approved by the Secretary of Commerce on January 4, 1982, and implementing regulations were published on October 5, 1982 (47 FR 43964). The FMP specifies that experimental fishing permits (EFPs) may be issued to authorize fishing which otherwise would be prohibited. The procedures for issuance of EFPs appear in the regulations at 50 CFR 663.10. Applications were received for three mid-water trawl vessels to delay sorting and discarding prohibited species from the catch in their fishing operations directed on Pacific whiting. By delaying sorting until the time of landing, the applicants expect to shorten the length of time before the catch is placed in refrigerated seawater. Since Pacific whiting deteriorate rapidly after death, rapid refrigeration is necessary to maintain product quality when shoreside processing is involved.

The regulations at 50 CFR 663.7(i) prohibit the retention of any species of salmonid or Pacific halibut caught in trawl nets, among other types of fishing gear. Normal practice on groundfish trawl vessels is to sort the catch from each tow before storing it in the hold. Species and sizes of fish that are not marketable are discarded during this sorting. Prohibited species also are returned to the sea at that time. Currently, any salmonid or Pacific halibut taken in a trawl and placed in the hold (not returned to the sea immediately) is considered to be retained in violation of 50 CFR 663.7(i).

Domestic mid-water trawlers that deliver Pacific whiting to foreign-flag processing vessels (joint ventures) are not affected by this prohibition on retention of salmonids because the catch is not brought on board the fishing vessel. Instead, the codend of the trawl net is taken directly on board the processing vessel. In this type of operation, prohibited species must be returned to the sea during the sorting on the processing vessel's deck, the point of first opportunity to sort.

The incidence of salmon caught by U.S. mid-water trawlers fishing for Pacific whiting and delivered to foreign processing vessels has been monitored carefully. During the 1982 season, observers reported that these joint venture operations caught and discarded 11,546 salmon while harvesting 67,465 metric tons (mt) of Pacific whiting. This rate of 0.17 salmon per metric tone of whiting will vary seasonally and geographically, but it represents the best documented information available on incidental take of salmon in this fishery. This annual average rate has been remarkably constant, ranging form 0.13 to 0.18 salmon per metric ton of whiting since 1979.

The three applications currently being considered are summarized below and are available for public review at the Regional Director's office during the pubic comment period (see address section). The Pacific Fishery Management Council will discuss these applications at its March 16–17, 1983, meeting in Portland at the Cosmopolitan Hotel, 1030 N.E. Union Avenue, Portland, Oregon (503–235–8433). The decision to grant or deny an EFP application will be based on the information in the completed application, willingness of the applicant to comply with conditions of the EFP, information provided at the Council's March meeting, and comments received during the public comment period.

(1) *Purpose and significance.*—The purpose of this experiment is to demonstrate that the quality of Pacific whiting improves when refrigeration is

not delayed due to sorting each tow for prohibited species. The applicants have stated that one impediment to further development of a wholly domestic Pacific whiting fishery is that the flesh deteriorates rapidly after death. Consequently it is important for the vessels to make short tows and to refrigerate the catch without delay. If the catch must be sorted on deck to remove any salmon which may be in the catch, whiting quality will suffer due to excess handling and delayed refrigeration. Since salmon are about the same size and color as Pacific whiting, they would not be noticed if the catch were dumped directly into the fish hold.

(2) *Vessel.*—Each applicant has requested a permit for one vessel. The three vessels range from 60 to 100 feet in length, and from 51 to 134 net tons and 61 to 198 gross tons in tonnage.

(3) *Species.*—The Applicants intend to target on Pacific whiting and plan to take approximately 3,000 metric tons during 1983. They also expect indicental catches of rockfish and salmon. They anticipate catching, on average, one salmon in every 10 mt of whiting, based on their experience over the past few years. The whiting catch would be sold to a local, shore-based processor. Incidental catches of rockfish would be sold to local processors as well, subject to any existing trip limits. Incidentally-caught salmon would be sorted from the catch at the processor and would be confiscated by enforcement agents. Confiscated salmon would not be sold and would not enter normal market channels.

(5) *Time.*—The operation would take place from April through October, but incidental catches of salmon are expected to be highest during the spring months.

(6) *Place.*—The vessels would fish predominately within a 60 mile radius of the entrance to Humboldt Bay, California.

(7) *Gear.*—Each vessel would use a mid-water rope trawl with a minimum mesh size of three inces in the codend, which is legal gear under the current regulation.

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

Dated: March 3, 1983.

Carmen J. Blondin,

Acting Deputy Assistant Administrator for Fisheries Resources Management, National Marine Fisheries Service.

[FR Doc. 83-5880 Filed 3-3-83; 5:11 pm]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Joint Audit Plans

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for comment.

SUMMARY: Each self-regulatory organization must adopt, and submit for approval by the Commodity Futures Trading Commission ("Commission"), rules prescribing minimum financial and related reporting requirements for its member futures commission merchants ("FCMs"), and conduct audits of its member FCMs for compliance with such rules. Each self-regulatory organization must also establish procedures for and conduct sales practice audits of member FCMs which engage in the offer and sale of exchange-traded options under the Commission's pilot program, as well as review promotional material used by FCMs in connection with such activity. Section 1.52(c) of the Commission's regulations provides that any two or more self-regulatory organizations may file with the Commission a plan for delegating to a "designated" self-regulatory organization ("DSRO") those responsibilities for any FCM which is a member of more than one such self-regulatory organization.

The Commission has approved previously joint audit plans covering all of the contract markets. The National Futures Association ("NFA"), a futures association registered under Section 17 of the Commodity Exchange Act, as amended ("Act") and a self-regulatory organization under the Commission's regulations, has entered into two agreements with the contract markets whereby NFA will become a party to one of the existing joint audit plans and a party to a new joint audit plan. The Commission is publishing this notice to request comment, in accordance with § 1.52(g) of the regulations, on the new joint audit plan and on the revisions to one of the existing joint audit plans.

DATE: Comments must be received on or before April 7, 1983.

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

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Special Counsel, or Delacy Cox, Assistant Chief Accountant, Division of Trading and Markets, at the above address. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: On April 23, 1980, the Commission approved, pursuant to § 1.52(g) of the regulations, the joint audit plan submitted by seven contract markets, the Amex Commodities Exchange, Inc., Chicago Mercantile Exchange, Commodity Exchange, Inc., MidAmerica Commodity Exchange, Coffee, Sugar & Cocoa Exchange, Inc., New York Cotton Exchange and New York Mercantile Exchange.[1] On May 28, 1982, the Commission approved revisions to that plan which: (1) Amended the plan's requirements for conducting audits to conform with Interpretation No. 4 of the Commission's Division of Trading and Markets or with guidelines to be developed by the Joint Audit Committee, and (2) amended the plan's membership to include the New York Futures Exchange, Inc. and to delete the Amex Commodities Exchange, Inc.[2]

The Commission has approved two other DSRO plans: one involving the Board of Trade of the City of Chicago, the Board of Trade of Kansas City, Missouri, Inc., the Minneapolis Grain Exchange and the MidAmerica Commodity Exchange,[3] and the other between the Board of Trade of the City of Chicago and the New Orleans Commodity Exchange.[4]

Each of the eleven contract markets is therefore a party to at least one approved DSRO plan, and the Board of Trade of the City of Chicago and the MidAmerica Commodity Exchange are parties to two of the three plans.

Each of those plans provides for a delegation by the parties to the plan to a DSRO of the responsibility for the following functions with respect to each FCM which is a member of more than one such party:

1. Monitoring and auditing for compliance with the minimum financial and related reporting requirements of the various contract markets;

2. Receiving the financial reports necessitated by such minimum financial and related reporting requirements; and

3. Monitoring and examining the books and records kept by FCMs relating to their business of dealing in commodity futures and cash commodities, insofar as such business relates to its dealings on contract markets.

[1] The Commission published a notice requesting comment on that plan at 44 FR 61239 (October 24, 1979).

[2] The Commission published a notice requesting comment on those revisions at 47 FR 15403 (April 9, 1982).

[3] The Commission published a notice requesting comment on that plan at 45 FR 48682 (July 21, 1980) and approved the plan on October 6, 1980.

[4] The Commission published a notice requesting comment on that plan at 46 FR 11572 (February 9, 1981), and approved the plan on March 30, 1981.

When the Commission adopted rules to govern the pilot program in exchange-traded commodity options, § 1.52(c) was amended to provide that a contract market's responsibilities for such function as reviewing promotional material and conducting sales practice audits of FCMs in connection with their exchange-traded option activities could be delegated to a DSRO under a joint audit plan.[5] The Commission also stated that "Existing joint audit plans which already have been approved by the Commission may, upon notice to the Commission, be expanded to include monitoring and auditing of FCMs with respect to option activities."[6] In connection with the filing of applications for designation as a contract market for option trading, and in other correspondence from those responsible for the operation of the joint audit plans, the various contract markets involved in option trading have provided such notices.

NFA has also submitted a document setting forth its program for regulating the option-related activites of its members, which the Commission has under advisement. In order for NFA's surveillance burden with respect to option-related activities of its member FCMs to be limited to those FCMs which are not members of any contract market it is necessary for NFA to become a party to joint audit plans with the contract markets. Otherwise, NFA would have to supervise the option-related activities of all of its member FCMs.

NFA has entered into two agreements, each of which is dated January 24, 1983 and which were submitted under cover of a letter dated February 8, 1983, with the various contract markets. One of the agreements is an amendment to the first joint audit plan. The amendment: (1) Adds NFA as a party to the plan; (2) delegates to the appropriate DSRO NFA's responsibilities to monitor and audit for compliance with NFA's financial requirements, and to receive financial reports necessitated by such requirements, for any NFA member futures commission merchant ("FCM") which is also a member of one or more of the seven contract markets which are parties to the first joint audit plan; (3) provides that each of those seven contract markets (except the New York Futures Exchange, Inc.) will include in its audit program for those FCMs which are not also members of the New York Stock Exchange, Inc. procedures for review of compliance by such FCMs with NFA Bylaws 1101 and 1301, concerning doing business with non-members of NFA and NFA dues and assessments, respectively; (4) further provides that the seven contract markets will consider, subject to certain conditions, adding to their audit programs such additional programs and procedures to monitor compliance with other NFA requirements as NFA shall submit; and (5) provides for the delegation to the appropriate DSRO of the responsibility to perform audits of exchange-traded option sales practices of member FCMs as required by Part 33 of the Commission's regulations. The agreement also provides that NFA is bound by the terms of the existing joint audit plan, which concern such items as access to information and audit workpapers, the right of inspection of a member FCM, payment of costs for auditing services, and a limitation on liability.

The second agreement submitted by NFA establishes a new jont audit plan, which would be the fourth joint audit plan, between and among the NFA and the Board of Trade of the City of Chicago, the Board of Trade of Kansas City, Missouri, Inc., the Minneapolis Grain Exchange, and the New Orleans Commodity Exchange.[7] The new joint audit plan: (1) Delegates to the appropriate DSRO each party's responsibilities in the financial and exchange-traded option areas; (2) provides that each contract market which is a party to the plan will include in its audit program procedures for review of compliance by FCMs with NFA Bylaws (including Bylaws 1101 and 1301) as shall be provided by NFA and agreed to by such contract markets; (3) sets forth each party's rights with respect to receiving information about any of its member FCMs; (4) requires each party to supply the DSRO with appropriate financial and option rules and any amendments or supplements thereto; (5) sets forth a limitation of liability and indemnification clause; and (6) provides for NFA's contribution to the costs incurred by the contract markets under the plan.

For the purpose of assuring comprehensive options sales practice audits of all firms engaged in soliciting or accepting options orders and to avoid duplicative audits, NFA is becoming a party to the first joint audit agreement along with the seven existing exchange participants and is entering into a new joint audit agreement (the "fourth" joint audit agreement) with four other exchanges as described above. Under these agreements, NFA will assume options sales practice auditing responsibilities for its FCM member firms which are not members of any contract market, the other exchange participants to the agreements will assume auditing responsibilities for member sales practices relating to all designated option contracts (not just those option contracts in which the exchange responsible for the audit is designated), and NFA will exercise disciplinary authority over its members' options practices. Such disciplinary authority will extend not only to NFA members which are not exchange members, but also to NFA members which are members of the exchanges which are participants in these joint audit agreements.

The firms on the NFA list set forth below, except for the three firms specially noted by more than one asterisk next to their names, are not members of any of the contract markets which are parties to the first joint audit plan. Those firms with a single asterisk next to their name are members of at least one of the other contract markets. If NFA's program for supervision of the option-related activities of its member FCMs and the revisions to the first joint audit plan and the new fourth joint audit plan are approved by the Commission, FCMs which are members of NFA (including those listed below) could engage in the solicitation or acceptance of orders for commodity options traded on a contract market of which the FCM is not a member.[8] Thus, FCMs which currently may not solicit or accept option orders at all, *i.e.*, those firms which are not members of any of the contract markets designated for option trading, as well as FCMs which may not solicit or accept orders for all of the options currently traded because they are not members of all such contract markets, would be able to do so.

Under the proposed fourth joint audit plan and the proposed revisions to the first joint audit plan, NFA will not conduct financial audits or exchange-traded option sales practice audits of any firm which is a member of any contract market. NFA will conduct financial and options sales practice audits for those FCMs, and only those FCMs, which are not members of any contract market. For example, if a firm

[5] 46 FR 54500, 54511, 54525, 54530, 54531 (November 3, 1981).

[6] 46 FR 54500, 54511 (November 3, 1981).

[7] While it was contemplated originally that MidAmerica Commodity Exchange would be a party to the fourth joint audit plan, the Commission has been informed by NFA's General Counsel that the MidAmerica Commodity Exchange will not be a signatory to the fourth joint audit plan at this time, though it may still decide to join the plan at some future date.

[8] *See* 17 CFR 33.3(b)(1) (1982), *as amended* 47 FR 56996, 57016 (December 22, 1982).

which is only a member of NFA and the Board of Trade of Kansas City, Missouri, Inc. engaged in the solicitation or acceptance of orders for commodity options traded on the Commodity Exchange, Inc., the sales practice audit covering such activity would be performed by the Board of Trade of Kansas City, Missouri, Inc.

Under the fourth joint audit plan, NFA will not be the DSRO for any firms. Each of the other parties to this new joint audit plan will be the DSRO under that plan for the same FCMs for which they are the DSRO under the second and third joint audit plans approved by the Commission. The same effect will be achieved under the first joint audit plan as amended to include NFA, since NFA will only conduct audits of FCMs which are not members of any contract market. However, the revisions to the first joint audit plan indicate that NFA will be the DSRO for the following firms (asterisks have been added by the Commission; only firms with no asterisk next to their names will be audited by NFA):

National Futures Association

AG Commodity Services, Inc.
Alpha Futures*
American Monetary Associated Services, Inc.
American Transeuro Corporation
Andersons, The*
Apache Trading Corporation
Arbitrage Management Company
Argyle Arbitrage, Ltd.
J. Aron Commodities Corp.**
Bachman and Associates
Bartlett Commodity Investors, Inc.*
Bateman, Eichler, Hill Richards, Inc.
Benson-Quinn Commodities, Inc.*
Atwood Commodities, Inc.*
Berry Trading Company*
Best Commodities Services, Inc.*
Bevill Bresler and Schulman Securities, Inc.
Bielfeldt, Lauritsen and Hagemeyer*
William Blair and Company
J. C. Bradford and Co.
Brown and Company Securities Corporation
K. J. Brown and Co., Inc.
C & D Commodities*
William M. Cadden and Co., Inc.
Cambistics International, Ltd.
Cantor Fitzgerald and Co., Inc.
Cedar Bluffs Grain Co., Inc.
Celtic Commodities Brokerage Inc.*
Cernich and Hartzell, Inc.*
Checkerboard Grain Company of Chicago, Inc.*
Christensen, Geldermann and Monaster, Ltd.*
Coastal Commodities, Inc.
Combined Investor Services, Inc.
E. M. Combs and Son*
Commodity Advisory Corporation of Texas
Commodity Correspondents Association, Inc.
Commodity Options, Inc.
Commodity Traders, Inc.
Commonwealth Commodities Corporation
Cralin and Co., Inc.
Crucible Securities Corporation
Delta Commodities Corp.
Dillon-Gage Inc.
Eisen and Blum, Inc.*
FSI Futures, Inc.
Farmers Commodities Corporation*
Farmers Commodities Services, Inc.
Farmers Union Grain Terminal Association*
Ferguson Grain Company*
Filler Weiner Zaner and Associates
First Commodity Corporation of Boston
First National Trading Corporation
First Pullen Commodity Services, Inc.
Foster and Marshall/American Express, Inc.*
Garvey Commodities Corporation*
Geisel Grain Company*
Gerstenberg and Company, Inc.*
R. Gervais Farms, Inc.
Gilder, Gagnon and Co., Inc.
Grain Marketing, Inc.
Griffin Trading Company*
Gulf, Great Lakes Grain, Ltd.*
Gulf South Trading Company, Inc.
Hagerty Grain Co., Inc.*
Herzog Commodities, Inc.
Horizon Trading, Inc.
F. G. Hunter and Associates
IPMC Commodities, Inc.
Illinois Cooperative Futures Company*
Indiana Commodities Inc.*
Investor Metals Services, Inc.
Iowa Grain Company*
Jernigan-Kinsella and Company*
KGM Commodities Company
Kellogg Commodities, Inc.*
Kelly Commodities, Inc.*
Kohl Lane Siebens and Company
Kornreich Commodities, Inc.
Landmark Commodities, Inc.
Lehman Special Services, Inc.
Lowell H. Listrom and Company, Inc.
MBZ Corporation
MFA Commodities Co.*
Mabon, Nugent and Company***
James T. McKerr and Company*
Mid-Co Commodities, Inc.*
Mid-Pacific Commodities, Ltd.
Monex Trading Corporation
W. R. Mullins and Co.
Murlas Commodities, Inc.*
Myers and Company*
NAP Futures, Inc.
NCNB Futures Corporation
Nemitoff Commodities Corp.
Newcomb Commodities Corporation
Norton and Company
Pillsbury Commodity Services, Inc.*
A. S. Polonyi Co.*
Private Ledger Financial Services, Inc.
Jeffrey S. Quinto and Company, Inc.*
Roberts, Malvina
Russell Company
SST Clearing Co., Inc.*
Scouler-Bishop of Missouri*
Sentinel Management Group, Inc.
Shatkin Investment Corporation
Shay Grain Clearing Company*
Sinclair and Co., Inc.
James Sinclair Trading Company, Inc.
Singer Wenger Trading Company, Inc.*
Sol Rich and Company****
R. F. Thompson, Inc.
Toberman Grain Company
Tracapco, Ltd.
Traders International Inc.
UMIC, Inc.
Union Equity Cooperative Exchange*
VKG Commodities, Inc.
Verrilli Altschuler Schwartz, Inc.
Virginia Trading Corporation*
Whitehall Investors International, Inc.
Wolcott and Lincoln, Inc.*

Requests for a copy of the documents submitted by the NFA in connection with the new joint audit plan and the revisions to the first joint audit plan may be made to the Secretariat.

Issued in Washington, D.C., on March 2, 1983 by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 83-5862 Filed 3-7-83; 8:45 am]

BILLING CODE 6351-01-M

*The firm is a member of at least one of the following contract markets and will, therefore, not be audited by NFA: Board of Trade of the City of Chicago, Board of Trade of Kansas City, Missouri, Inc., Minneapolis Grain Exchange, New Orleans Commodity Exchange.

**This firm's name has been changed to GSA Clearing Corporation, whose DSRO is listed as Commodity Exchange, Inc.

***This firm also has the New York Futures Exchange, Inc. listed as its DSRO.

****This firm also has the Chicago Mercantile Exchange listed as its DSRO.

DEPARTMENT OF EDUCATION

National Advisory Council on Adult Education; Meeting

AGENCY: National Advisory Council on Adult Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Committee on Illiteracy of the National Advisory

Council on Adult Education. This notice also describes the functions of the Council. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act.

DATE: March 24–25, 1983, 9:00 a.m. to 5:00 p.m.

ADDRESS: National Advisory Council on Adult Education, 425 13th St., NW., Suite 323, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Helen Banks, Administrative Assistant, National Advisory Council on Adult Education, 425 13th St., NW., Washington, D.C. 20004 (202/376–8892).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under Section 313 of the Adult Education Act (20 U.S.C. 1201). The Council is established to:

Advise the Secretary in the preparation of general regulations and with respect to policy matters arising in the administration of this title, including policies and procedures governing the approval of State plans under section 306 and policies to eliminate duplication, and to effectuate the coordination of programs under this title and other programs offering adult education activities and services.

The Council shall review the administration and effectiveness of programs under this title, make recommendations with respect thereto, and make annual reports to the President of its findings and recommendations (including recommendations for changes in this title and other Federal laws relating to adult education activities and services). The President shall transmit each such report to the Congress together with his comments and recommendations.

The meeting of the Committee is open to the public. The proposed agenda includes:

Develop position paper on illiteracy.

Records are kept of all Council proceedings, and are available for public inspection at the office of the National Advisory Council on Adult Education, 425 13th St., NW., Suite 323, Washington, D.C., 20004, from the hours of 8:00 a.m. to 4:30 p.m.

Signed at Washington, D.C. on February 28, 1983.

Rick Ventura,

Executive Director, National Advisory Council on Adult Education.

[FR Doc. 83-5749 Filed 3-4-83; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 83-CERT-003]

Application for Certification of the Use of Natural Gas To Displace Fuel Oil; Bethlehem Steel Corp.

Bethlehem Steel Corporation (Bethlehem), 8th & Eaton Avenue, Bethlehem, Pennsylvania 18106, filed an application on February 17, 1983 with the Economic Regulatory Administration (ERA) for certification of an eligible use of natural gas to displace fuel oil at its Lackawanna Plant in Lackawanna, New York, pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). More detailed information is contained in the application on file and available for public inspection at the ERA Natural Gas Division Docket Room, RG–43, Room GA–007, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

In its application, Bethlehem indicates that the volume of natural gas for which it requests certification is approximately 6,000 Mcf per day. This volume is estimated to displace the use of approximately 40,865 gallons (973 barrels) of No. 6 fuel oil (1.0 percent sulfur) per day.

The eligible seller is N.E.A. Cross Company, R.D. No. 1, P.O. Box 86, Union City, Pennsylvania 16438. The gas will be transported by National Fuel Gas Supply Corporation, 308 Seneca Street, Oil City, Pennsylvania 16301; and by National Fuel Gas Distribution Corporation, 10 Lafayette Square, Buffalo, New York 14203.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Office of Fuels Programs, Natural Gas Division, RG–43, Room GA–007, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Attention: Paula A. Daigneault, within ten (10) calendar days of the date of publication of this notice in the **Federal Register.**

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice will be given to Bethlehem and any persons filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C. on March 2, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-5865 Filed 3-7-83; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. OFU-037]

Energy Supply and Environmental Coordination Act; Effectiveness of Prohibition Order; Virginia Electric & Power Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Effectiveness.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby issues its Notice of Effectiveness (NOE) to Virginia Electric and Power Company's (VEPCO) Portsmouth Unit 4, effectuating a Prohibition Order issued to that unit on June 30, 1975, pursuant to Section 2 of the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. 791 *et seq.* (ESECA). When the prohibition contained in the Order becomes effective, Portsmouth Unit 4 will be prohibited from using petroleum or natural gas as its primary energy source. The prohibition will become effective on December 30, 1985.

Detailed information may be found in the Suplementary Information section below.

DATES: The Prohibition Order is effective upon service and the prohibition contained therein will become effective on December 30, 1985.

FOR FURTHER INFORMATION CONTACT:

Steven E. Ferguson, Director, Fuels Conversion Division, Office of Fuels Programs, Economic Regulatory Administration, Department of Energy, Forrestal Building, Room GA–093, 1000 Independence Avenue SW., Washington, D.C. 20585, Phone (202) 252–1316

Marya Rowan, Esq., Office of the General Counsel, Department of Energy, Forrestal Building, Room 6B–222, 1000 Independence Avenue SW.,

Washington, D.C. 20585, Phone (202) 252–2967.

SUPPLEMENTARY INFORMATION:

Docket No.	Owner	Installation	Unit [1]	Location
OFU–037	Virginia Electric & Power Co.	Portsmouth	4	Portsmouth, Va.

[1]Effective January 6, 1982, Virginia Electric and Power Company elected, pursuant to Section 1022 of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) and DOE Regulations published at 46 FR 46118, October 1, 1981, to have Portsmouth Unit 4 remain subject to Section 2 of ESECA. No election was made for Portsmouth Units 1, 2, and 3, which also received prohibition order on June 30, 1975 (OFU–034, OFU–035 and OFU–036); accordingly, these units are within the jurisdication of Title III, Section 301 of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 4301 *et seq.*).

On June 30, 1975, the Federal Energy Administration issued a Prohibition Order to the above listed powerplant pursuant to Section 2 of the Energy Supply and Environmental Coordination Act of 1974 (ESECA), as amended, (15 U.S.C. 791 *et seq.*). The order stated that it would become effective on the date specified in a Notice of Effectiveness (NOE), to be served on the powerplant subsequent to issuance of the Prohibition Order.

Pursuant to 10 CFR 303.10(b), 303.37 and 305.7, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) [1] hereby gives notice that the Prohibition Order issued June 30, 1975 (40 FR 28430, July 3, 1975) to the above listed powerplant shall be effective upon the date this Notice is served. The prohibition against the burning of natural gas or petroleum as the primary energy source for Portsmouth Unit 4 shall become effective on December 30, 1985. Pursuant to 10 CFR 303.7(c), service of this NOE is complete upon mailing.

In accordance with the provisions of the Clean Air Act (42 U.S.C. 1857 *et seq.* (Section 119(d)(1)(B)) which were in effect at the time the subject order was issued, and in accordance with the requirements of the Clean Air Act, as amended (42 U.S.C. 7413(d)(5)), and Section 112 of the Clean Air Act Amendments of 1977 (Pub. L. 95–95), the Environmental Protection Agency (EPA) certified to DOE, by letter dated May 11, 1977 that 33 months from the date of service of DOE's Notice of Effectivenes (December 30, 1985) would be the earliest date upon which Portsmouth Unit 4 could burn coal and comply with all applicable air pollution requirements.

[1]Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration to the Department of Energy pursuant to the Department of Energy Organization Act (Pub. L. 95–91).

In accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), DOE has performed an environmental review of its action and has concluded that the Prohibition Order to Portsmouth Unit 4, when made effective by this Notice, is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA (42 U.S.C. 4332(c)).

As provided in the June 30, 1975, Prohibition Order, any person aggrieved by such order may file an appeal with the DOE Office of Hearings and Appeals in accordance with 10 CFR Part 303, Subpart H. The appeal must be filed within 30 days after the service of this Notice. There has not been an exhaustion of administrative remedies until an appeal has been filed pursuant to Subpart H of Part 303 and the appellate proceeding is completed by the issuance of an order granting or denying the appeal.

Application may be made for modification or rescision of the Prohibition Order in accordance with the provisions of 10 CFR Part 303, Subpart J. An application for modification or rescission of a Prohibiton Order based on "significantly changed circumstances", which circumstances occurred during the interval between issuance of the Order and service of this NOE, shall be filed within 30 days of service of this Notice. Application for modification or rescission of a Prohibition Order based on significantly changed circumstances occurring after that interval may be filed at any time after this Notice is served.

All terms and conditions of the Prohibition Order and this Notice may be the subject either of an appeal or an application for modification or rescission.

If an application for modification or rescission of a Prohibition Order is made in accordance with Subpart J of Part 303, any appeal of the Order under Part 303, Subpart H shall be suspended until 30 days after an Order has been issued in accordance with Subpart J or until 30 days from the date on which such application for modification or rescission may be treated as having been denied in all respects.

The Prohibition Order made effective by this Notice is effective against any persons that, as of the date of service of this NOE, own, lease, operate, or control the above named powerplant, and against any successors-in-interest or assignees of such persons.

Any terms utilized in this Notice have the same meaning as such terms have in 10 CFR Parts 303 and 307.

Issued in Washington, D.C. March 1, 1983.

Robert L. Davies,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83–5863 Filed 3–7–83; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Materials R&D Panel; Energy Research Advisory Board; Meeting

Notice is hereby given of the following meeting:

Name: Materials R&D Panel of the Energy Research Advisory Board (ERAB). ERAB is a Committee constituted under the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770).

Date and time: March 31, 1983, 8:00 a.m. to 4:00 p.m.

Place: Department of Energy, Room 4A–110, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Contact: William Woodard, Energy Research Advisory Board, Department of Energy, Forrestal Building, ER–6, 1000 Independence Avenue SW., Washington, DC 20585, Telephone: 202/252–8933.

Purpose of the parent board: To advise the Department of Energy on the overall research and development conducted in DOE nad to provide long-range guidance in these areas to the Department.

Tentative agenda:

—Discussion of Initial Working Outline for Draft Report.

—Future Meetings Outside Washington, D.C.

—Overview of Other Federal Agencies' Programs in Materials R&D.

Public participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 8:30 a.m. and

4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on March 3, 1983.

J. Ronald Young,

Director for Management, Office of Energy Research.

[FR Doc. 83-5804 Filed 3-1-83; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP 180612; PH-FRL 2315-2]

Mississippi; Receipt of Application for Specific Exemption for Ferriamicide; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Mississippi Department of Agriculture and Commerce (hereafter referred to as the "Applicant"), for the use of Ferriamicide, which contains the active ingredient dodecachlorooctahydro-1,3,4-metheno-2H-cyclobuta[cd]pentalene (commonly known as mirex) to control imported fire ant infestations. All uses of mirex were voluntarily cancelled in 1977. EPA is soliciting comment before making the decision whether or not to grant the specific exemption.

DATE: Comments must be received on or before April 7, 1983.

ADDRESS: Comments should bear the document control number OPP-180612 and be submitted to: Document Control Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M St., SW., Washington, D.C. 20460.

The public record regarding this notice will be available for public inspection in Rm. E-107 at the above address from 8:00 a.m. to 4 p.m. Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Jack E. Housenger, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1192).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of Ferriamicide to control imported fire ants. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

The Applicant claims that the imported fire ant problem has become very serious over the past few years because, in part, the voluntary cancellation of mirex in 1977 eliminated the use of an effective and relatively low-cost imported fire ant control. The Applicant also argues that mirex was a desirable means of control because of the simplicity of application.

The Applicant claims that currently registered controls are too expensive, degrade too quickly to offer effective control, and/or cannot be applied easily to large areas of infested acreages.

Authorization has been requested to use 1,250 pounds of the active ingredient on 2.5 million acres. Treatments would be made to pasture, rangeland, land used to produce forage crops, and non-agricultural land, to include fence rows, ditch banks, and other margins not used for food production within the cropland area, as well as public areas and home sites.

The Applicant claims thats the use of Ferriamicide would reduce economic losses currently suffered by Mississippi farmers and other citizens and that without this proposed use, the imported fire ant infestation can be expected to worsen dramatically.

The Applicant proposes applying Ferriamicide using both ground and aerial application equipment at a maximum rate of one pound of bait, which contains .05 percent active ingredient, per acre. Mound treatments are also proposed, at a rate of one-quarter ounce of product per mound. Authorization for this use is requested for a 12-month period.

The Agency through this notice solicits public comment on the application for the emergency exemption submitted by Mississippi. EPA, however, does not believe that the court in the case of *EDF* v. *Blum*, 458 F. Supp. 650 (D.D.C. 1978) was correct in characterizing an emergency exemption under section 18 of FIFRA as a "rule" subject to the rulemaking provisions of the Administrative Procedures Act (5 U.S.C. 553). Rather, the Agency treats the consideration of applications for emergency exemptions as informal adjudications. Therefore, the Agency does not believe it is legally required to provide opportunity for notice and comment as a part of the informal adjudication to determine whether to issue an emergency exemption. However, due to the widespread public interest concerning the use of the pesticide Ferriamicide, the Agency in its discretion has chosen to provide this opportunity for comment pursuant to 40 CFR 166.10 as a part of the informal adjudication. The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by Mississippi.

Dated: February 23, 1983.

Edwin L. Johnson,

Director, Office of Pesticide Programs.

[FR Doc. 83-5341 Filed 3-7-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[BC Docket 82-345]

Commission Announces Oral Presentation Schedule in Network Television Financial Interest and Syndication Proceeding

March 4, 1983.

The Commission indicates its intention to hold an En Banc meeting to hear oral presentations in BC Docket 82-345. The meeting will be held on Monday, March 14, 1983, at the Commission's offices at 1919 M Street, NW., Washington, D.C. in room 856. Within each panel parties are free to coordinate presentations. Groups within a panel whose interests are similar are welcome to consolidate, allowing one representative more time. The schedule follows:

1. (8:30-9:00) National Telecommunication and Information Administration, United States Department of Justice.

Each party is allocated 10 minutes, and the Commission will have a 10 minute question period.

2. (9:00-10:40) Committee for Prudent Deregulation (CPD), Motion Picture Association of America, CPD (Program producer), CBS Inc., American Broadcasting Companies, Inc., National Broadcasting Company, Inc., Westinghouse Broadcasting and Cable.

Each party is allocated 10 minutes and the Commission will have a 30 minute question period.

3. (10:55-12:15) CPD (Economist), Robert W. Crandall, Association of National Advertisers, Owen, Greenhalgh & Myslinski, Shooshan & Jackson, Inc., Bolter & Nilsson RJ.

Each party is allocated 10 minutes and the Commission will have a 20 minute question period.

4. (1:30–3:20) CPD (Representative), CPD (Representative), Association of Independent Television Stations, National Association of Independent Television Producers and Distributors, Metromedia, NBC Television Affiliates, ABC Television Affiliates, CBS Television Network Affiliates, NATPE International.

Each party is allocated 10 minutes and the Commission will have a 20 minute question period.

5. (3:30–4:35) National Black Media Coalition, National Commission of National Council of Churches of Christ in the U.S.A., Office of Communication of the United Church of Christ, National Council of Senior Citizens, Comma/OCC Media Department, Black Citizens for Fair Media, Office of Media Communication for Presbyterian Church in United States, United Rubber, Cork, Linoleum & Plastic Workers of America, Women in Film, Telecommunication Research and Action Center.

The initial two parties are allocated 10 minutes and the other parties 5 minutes. A 10 minute question period will follow.

6. (4:50–5:45) Springfield Broadcasting, Taft Broadcasting, Buena Vista Cablevision, Inc., Interstallar Media, Inc., Gateway Communications, CPD (Guild), CPD (Syndicator).

The initial two parties are allocated 10 minutes and the other parties 5 minutes. A 10 minute question period will follow.

This meeting will be open to the public. For further information contact William H. Johnson, or Molly Pauker, telephone number (202) 632–6460.

William J. Tricarico,

Secretary, Federal Communication Commission.

[FR Doc. 83-3051 Filed 3-7-83; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement Filed

The Federal Maritime Commission hereby gives notice that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of the agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on the agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: T–3753–2.

Title: MPA/A&G Lease Amendment.

Parties: Maryland Port Administration (MPA)/Atlantic and Gulf Stevedores, Inc. (A&G).

Synopsis: Agreement No. T–3753–2 modifies the basic agreement between the parties which provides for MPA's five-year lease to A&G, with renewal options, of the South Locus Point Marine Terminal at the Port of Baltimore. The purpose of the modification is to memorialize the settlement of a dispute between the parties by (1) redefining the word "cargo" for the purposes of the agreement, (2) adjusting A&G's base rental payment to MPA, and (3) providing a liquidated damages clause should A&G not exercise its renewal option.

Filing Party: Richard A. Lidinsky, Jr., Thomas K. Farley, Attorneys for the Maryland Port Administration, World Trade Center Baltimore, Baltimore, Maryland 21202.

By Order of the Federal Maritime Commission.

Dated: March 3, 1983.

Francis C. Hurney,

Secretary.

[FR Doc. 83-5834 Filed 3-7-83; 8:45 am]

BILLING CODE 6730-01-M

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: T–4093.

Title: Los Angeles/Metropolitan Stevedore Agreement.

Parties: City of Los Angeles (City/Metropolitan Stevedore Company (Metropolitan).

Synopsis: Agreement No. T–4093 is a five-year permit granted by City to Metropolitan of approximately 39 acres for use as a marine terminal.

Filing party: Frank Wagner, Deputy City Attorney, Office of City Attorney, Harbor Division, P.O. Box 151, San Pedro, California 90731.

Agreement Nos.: 14–49 and 5700–32.

Title: Transpacific Freight Conference (Hong Kong) and New York Freight Bureau.

Parties: Agreement No. 14–49: Japan Line, Ltd.; Nippon Yusen Kaisha; Showa Line Ltd.; and Yamashita-Shinnihon Steamship Co., Ltd.; Agreement No. 5700–32: Japan Line, Ltd.; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The basic agreements would be amended to (1) reduce the voting requirement for actions other than changes in the agreements from three-fourths to a simple majority; (2) provide that each member shall have the right, on thirty days' notice, to take independent action on any freight rate, rule or regulation; (3) provide for a separate misrating program; (4) delete obsolete references to Compradores and Chinese Freight Agents; (5) allow carriers to divulge their positions on conference matters to shippers and consignees; (6) permit adoption of Appendices to the respective Agreements; and (7) make administrative changes in agreement language.

Filing party: Charles F. Warren, Warren & Associates, P.C., 1100 Connecticut Avenue, NW., Washington, D.C. 20036.

Agreement No.: 10051–8.

Title: Mediterranean Force Majeure Agreement.

Parties: Compagnie Maritime d'Affretement, Costa Line, Farrell Lines, Inc., Hellenic Lines Ltd., Ibero Lines, Italia S.p.A.N., Jugolinija, Lykes Bros. Steamship Co., Inc., Prudential Lines,

Sea-Land Services, Inc., Spanish Line, and Zim Israel Navigation Co., Ltd.

Synopsis: The amendment extends the scope to include the Gulf Ports of the United States.

Filing agent: David F. Smith, Esquire, Billig, Sher & Jones, P.C., 2033 K Street, NW., Washington, D.C. 20006.

Agreement No.: 10469.

Title: TMT/Naviera Central Husbanding Agreement.

Parties: Trailer Marine Transport Corporation (TMT)/Naviera Central, C.A. (Naviera Central).

Synopsis: Agreement No. 10469 provides that TMT shall act as husbanding agent in the United States for Naviera Central, and shall perform husbanding and related terminal and administrative services.

Filing party: William H. Fort, Esquire, Kominers, Fort, Schlefer & Boyer, 1776 F Street, NW., Washington, D.C. 20006.

By Order of the Federal Maritime Commission.

Dated: March 3, 1983.

Francis C. Hurney,

Secretary.

[FR Doc. 83-5835 Filed 3-7-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by a Bank Holding Company; Bank of New Hampshire Corp.

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of New Hampshire Corporation,* Manchester, New Hampshire; to acquire 100 percent of the voting shares of The Bristol Bank, Bristol, New Hampshire ("Bank"), through merger with its wholly owned *de novo* subsidiary, First BNH Acquisition Bank, Manchester, New Hampshire. Bank will operate under its charter and title. Comments on this application must be received not later than March 31, 1983.

Board of Governors of the Federal Reserve System, March 2, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-5806 Filed 3-7-83; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Bank Shares by a Bank Holding Company; First Bancorp of Belleville

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Bancorp of Belleville,* Belleville, Illinois; to acquire 100 percent of the voting shares or assets of Fairview Heights Community Bank, Fairview Heights, Illinois. Comments on this application must be received not later than April 1, 1983.

Board of Governors of the Federal Reserve System, March 2, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-5810 Filed 3-7-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Company; Proposed de Novo Nonbank Activities; Dominion Bankshares Corp.

The organization identified in this notice has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to the application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on the application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the propsoal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Dominion Bankshares Corporation,* Roanoke, Virginia (investment or financial advisory activities; United States): To engage through its subsidary, Dominion Trust Company, in acting as investment or financial advisors to the extent of furnishing general economic information and advice, general economic statistical forecasting services and industry studies. These activities would be performed throughout the United States of America. Comments on this application must be received not later than March 30, 1983.

Board of Governors of the Federal Reserve System, March 2, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-5812 Filed 3-7-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities; Shawmut Corp., et al.

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), *directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.*

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Shawmut Corporation*, Boston, Massachusetts (commercial financing; United States): To engage through its subsidiary, Shawmut Credit Corp., in commercial finance activities including the making or acquiring for its own account or for the account of others loans and other extensions of credit such as would be made by a finance company (including, without limitation, commercial loans, which may be secured by acounts receivable, inventory, equipment or other assets) and servicing such loans and other extensions of credit for others. These activities would be conducted from a new office to be located in New York, New York serving the United States. Comments on this application must be received not later than March 28, 1983.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Kansas Bancorporation, Inc.*, Kansas City, Kansas (mortgage lending activities; Kansas, Missouri): To engage, through its subsidiary, Kansas Mortgage Company, in originating, acquiring and servicing residential and commercial real estate loans. These activities would be conducted from an office in Overland Park, Kansas, serving the metropolitan Kansas City area. Comments on this application must be received not later than March 31, 1983.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *Trabanc*, Salt Lake City, Utah (management consulting; Utah, Idaho, and Wyoming): To engage, through its subsidiary, Tracy Management Consulting Co., in providing management consulting advice to institutions such as savings and loan associations, mutual savings banks, credit unions, industrial banks, Morris Plan banks, cooperative banks, and industrial loan companies. These activities would be conducted from offices in Salt Lake City, Utah, serving Utah, Idaho, and Wyoming. Comments on this application must be received not later than March 31, 1983.

Board of Governors of the Federal Reserve System, March 2, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-5808 Filed 3-7-83; 8:45 am]

BILLING CODE 6210-01-M

Centerre Bancorporation

Centerre Bancorporation, St. Louis, Missouri; Charter Corp., Kansas City, Missouri; CNB Financial Corporation, Kansas City, Kansas; County Tower Corp., St. Louis, Missouri; and Mercantile Banccorporation, Inc., St. Louis, Missouri, have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act of 1956 as amended, (12 U.S.C. 1843(a)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)) for prior approval to retain at least a one-fourth interest (except that CNB Financial Corporation and County Tower Corp. will acquire at least a one-eighth interest) in Monetary Transfer System, a joint venture and partnership located in St. Louis, Missouri.

Applicants state that the proposed joint venture would engage in data processing activities through the operation of a communications network processing service and switching system for electronic funds transfer and information exchange between financial institutions.

The activities would be performed from offices of Applicant's joint venture in St. Louis, Missouri, serving the states of Illinois, Iowa, Kansas, Kentucky, and Missouri. 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 whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of St. Louis.

Any views or request for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C., not later than April 1, 1983.

Board of Governors of the Federal Reserve System, March 2, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-5809 Filed 3-7-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies; First National Bankshares, Inc., et al.

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 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 Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First National Bankshares, Inc.*, Stuart, Florida; to become a bank holding company by acquiring at least 80 percent of the voting shares of First National Bank & Trust Co., Stuart, Florida. Comments on this application must be received not later than March 29, 1983.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Upbancorp, Inc.*, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Uptown National Bank of Chicago, Chicago, Illinois. Comments on this application must be received not later than April 1, 1983.

Board of Governors of the Federal Reserve System, March 2, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-5811 Filed 3-7-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies; Mercantile Bancorp, Inc., et al.

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 of 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 Chicago (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Mercantile Bancorp, Inc.*, Hammond, Indiana; to become a bank holding company by acquiring 80 percent of the voting shares of Mercantile National Bank of Indiana, Hammond, Indiana. Comments on this application must be received not later than March 31, 1983.

2. *Outagamie Bank Shares, Inc.*, Appleton, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of The Outagamie Bank, Appleton, Wisconsin. Comments on this application must be received not later than March 28, 1983.

3. *Western Illinois National Bancshares, Inc.*, Aledo, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of National Bank of Aledo, Aledo, Illinois. Comments on this Application must be received not later than March 23, 1983.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Fairplay Bancorporation, Inc.*, Fairplay, Colorado; to become a bank holding company by acquiring 90.4 percent of the voting shares of The Bank of Fairplay, Fairplay, Colorado. Comments on this application must be received not later than March 31, 1983.

2. *Farley Bancshares, Inc.*, Farley, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Farley State Bank, Farley, Missouri. Comments on this application must be received not later than March 23, 1983.

3. *Kansas National Bancorporation, Inc.*, Goodland, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The First Insurance Agency, Inc., Goodland, Kansas which owns 66.79 percent of the voting common stock of The First National Bank, Goodland, Kansas. Applicant will directly acquire 1.62 percent of Bank's outstanding voting common stock and subsequent to the acquisition of Agency, Applicant will acquire the remaining 31.59 percent of Bank's outstanding voting common stock through an interim bank merger transaction. Comments on this application must be received not later than March 31, 1983.

4. *Val Cor Bancorporation, Inc.*, Cortez, Colorado; to become a bank holding company by acquiring 80 percent of the voting shares of Valley National Bank of Cortez, Cortez, Colorado. Comments on this application must be received not later than March 31, 1983.

Board of Governors of the Federal Reserve System, March 2, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-5807 Filed 3-7-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 82M-0324]

Amcon, Inc.; Premarket Approval of the Amcon Way Plus

Correction

In FR Doc. 83-4353, beginnig on page 7504, in the issue of Tuesday, February 22, 1983, last column, fourth line from the end of the page, "net" should read "next".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Burley District; Advisory Council Meeting

Notice is hereby given in accordance with Pub. L. 91-463, Pub. L. 94-579, Pub. L. 95-514, and 43 CFR Part 1780, that a meeting of the Burley District Advisory Council will be held on Wednesday, April 20, 1983, at 9 a.m. at the Conference Room in the Burley District Office, 200 South Oakley Highway, Burley, Idaho 83318.

Agenda for the meeting will include the following:

1. Introduction and Opening Comments.
2. Orientation and Highlight of District Programs.
3. Council Function and Involvement.
4. Fiscal Year 1983 Public Land Sale Program.
5. Cassia Resource Management Plan.
6. Magic and Raft River Resource Area Consolidation.
7. Minerals Management Service Merger with BLM.
8. Election of Officers.
9. Arrangements for Next Meeting.

The meeting is open to the public. Interested persons may make oral statements to the Council between 3:30 p.m. and 4 p.m., or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the Burley BLM District Office, 200 South Oakley Highway, Burley, Idaho 83318 by April 14, 1983. Depending on the number of persons wanting to make oral statements, a per-person time limit may be established.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction during business hours (7:45 a.m. to 4:30 p.m.) 30 days after the meeting.

Dated: February 23, 1983.

Nick James Cozakos,

District Manager.

[FR Doc. 83-5752 Filed 3-4-83; 8:45 am]

BILLING CODE 4310-84-M

[F-14915-A]

Alaska Native Claims Selection; Ohog Inc.

On November 15, 1974, Ohog Incorporated, for the Native village of Ohogamiut, filed selection application F-14915-A, as amended, under the provisions of Sec. 12(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611) (ANCSA), for the surface estate of certain lands in the Ohogamiut area.

As to the lands described below, application F-14915-A, as amended, is properly filed and meets the requirements of ANCSA and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a), aggregating approximately 66,017 acres, is considered proper for acquisition by Ohog Incorporated and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA.

Seward Meridian, Alaska (Unsurveyed)

T. 18 N., R. 67 W.,
Secs. 31 and 32;
Sec. 33, excluding Native allotment F-16108 Parcel B.
Containing approximately 1,525 acres.

T. 17 N., R. 68 W.,
Sec. 1.
Containing approximately 640 acres.

T. 18 N., R. 68 W.,
Secs. 14, 15, and 16;
Sec. 19, excluding Native allotments F-16107 and F-17233 Parcel C;
Sec. 20;
Sec. 21, excluding Native allotments F-16103 Parcel A, F-17233 Parcel D, and F-17337 Parcel D;
Secs. 22 and 23;
Secs. 26, 27, and 28;
Sec. 29, excluding Native allotment F-17337 Parcel C;
Sec. 30, excluding Native allotments F-16107, F-16214 Parcel C, F-17337 Parcel B, and F-17338 Parcel A;
Sec. 31;
Secs. 32 and 33, excluding Native allotment F-19182 Parcel A;
Secs. 34, 35, and 36.
Containing approximately 8,623 acres.

T. 16 N., R. 69 W.,
Secs. 6 and 7.
Containing approximately 1,199 acres.

T. 17 N., R. 69 W.,
Secs. 1 to 4, inclusive;
Sec. 5, excluding Native allotments F-15608 Parcel B and F-17338 Parcel B;
Sec. 6;
Secs. 7 and 8, excluding Native allotment F-15608 Parcel B;
Secs. 9 to 16, inclusive;
Sec. 17, excluding Native allotment F-16097 Parcel B;
Sec. 18, excluding Native allotments F-16097 Parcel B, F-17235 Parcel B, F-19182 Parcel C, and F-19196 Parcel B;
Secs. 19 and 20, excluding Native allotment F-16097 Parcel B;
Secs. 21 to 32, inclusive;
Secs. 33 and 34, excluding Native allotment F-16106;
Secs. 35 and 36.
Containing approximately 21,448 acres.

T. 18 N., R. 69 W.,
Secs. 22, 23, and 24;
Sec. 25, excluding Native allotment F-19196 Parcel A;
Secs. 26 and 27;
Sec. 28, excluding Native allotment F-16186 Parcel A;
Secs. 31 and 32;
Sec. 33, excluding Native allotment F-16186 Parcel A;
Secs. 34, 35, and 36.
Containing approximately 4,925 acres.

T. 16 N., R. 70 W.,
Secs. 1 to 18, inclusive.
Containing approximately 11,401 acres.

T. 17 N., R. 70 W.,
Secs. 1, 2, and 3;
Secs. 11 and 12;
Sec. 13, excluding Native allotments F-15609 Parcel D, F-17240 Parcel D, and F-19196 Parcel B;
Sec. 14;
Sec. 19, excluding Native allotments F-15609 Parcel A, F-17238 Parcel B, F-17240 Parcel A, F-18191 Parcel B, and F-18368 Parcel C;
Secs. 20 to 36, inclusive.
Containing approximately 13,081 acres.

T. 18 N., R. 70 W.,
Sec. 22, excluding Native allotment F-17240 Parcel C;
Secs. 23 and 26;
Secs. 27 and 34, excluding Native allotment F-17236;
Secs. 35 and 36.
Containing approximately 3,175 acres.

Aggregating approximately 66,017 acres.

Excluded from the above-described lands herein approved for convevance are the submerged lands, up to the ordinary high water mark, beneath all water bodies determined by the Bureau of Land Management to be navigable because they have been or could be used in connection with travel, trade, and commerce. Those water bodies are identified on the attached navigability maps, the original of which will be found in easement case file F-14915-EE.

All other water bodies not depicted as navigable on the attached maps within the lands to be conveyed were reviewed. Based on existing evidence, they were determined to be nonnavigable.

The lands excluded in the above description are not being approved for conveyance at this time and have been excluded for the following reason: Lands are under applications pending further adjudication. These exclusions *do not* constitute a rejection of the selection application, unless specifically so stated.

The conveyance issued for the surface estate of the lands described above shall contain the following reservations to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(f)); and

2. Pursuant to Sec. 17(b) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)), the following public easements referenced by easement identification number (EIN) on the easement maps attached to this document, copies of which will be found in case file F-14915-EE, are reserved to the United States. All easements are subject to applicable Federal, State, or Municipal corporation regulation. The following is a listing of uses allowed for each type of easement. Any uses which are not specifically listed are prohibited.

25 Foot Trail—The uses allowed on a twenty-five (25) foot wide trail easement are: travel by foot, dogsled, animals, snowmobiles, two- and three-wheel vehicles, and small all-terrain vehicles (ATV's) (less than 3,000 lbs. Gross Vehicle Weight (GVW)).

One Acre Site— The uses allowed for a one (1) acre site easement are: vehicle

parking (e.g., aircraft, boats, ATV's snowmobiles, cars, trucks), temporary camping, loading or unloading. Temporary camping, loading, or unloading shall be limited to 24 hours.

a. (EIN 8 C5) An easement twenty-five (25) feet in width for a proposed access trail from the Yukon River in Sec. 26, T. 18 N., R. 69 W., Seward Meridian, northerly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

b. (EIN 8a C5) A one (1) acre site easement upland of the ordinary high water mark in Sec. 26, T. 18 N., R. 69 W., Seward Meridian, on the right bank of the Yukon River. The uses allowed are those listed above for a one (1) acre site easement.

c. (EIN 9 C4, C5) An easement twenty-five (25) feet in width for a proposed access trail from site EIN 9a C4, C5 on the left bank of the Yukon River in Sec. 36, T. 18 N., R. 69 W., Seward Meridian, southeasterly to public lands. The uses allowed are those listed above for a twenty-five (25) foot wide trail easement.

d. (EIN 9a C4, C5) A one (1) acre site easement upland of the ordinary high water mark on the left bank of the Yukon River in Sec. 36, T. 18 N., R. 69 W., Seward Meridian. The uses allowed are those listed above for a one (1) acre site easement.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent after approval and filing by the Bureau of Land Management of the official plat of survey confirming the boundary description and acreage of the lands hereinabove granted;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (48 U.S.C. Ch. 2, Sec. 6(g))), contract, permit, right-of-way or easement, and the right of the lessee, contractee, permittee or grantee to the complete enjoyment of all rights, privileges and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1616(b)(2)) (ANCSA), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law; and

3. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1613(c) (Supp. IV, 1980)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section.

Ohog Incorporated (for the village of Ohogamiut) is entitled to conveyance of 69,120 acres of land selected pursuant to Sec. 12(a) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is approximately 66,017 acres. The remaining entitlement of approximately 3,103 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA and Departmental regulation 43 CFR 2652.4, conveyance of the subsurface estate of the lands described above shall be issued to Calista Corporation when the surface estate is conveyed to Ohog Incorporated (for the village of Ohogamiut), and shall be subject to the same conditions as the surface conveyance, except for those provisions under Sec. 14(c) of ANCSA; also the right to explore, develop or remove minerals from the subsurface estate in lands within the boundaries of the Native village shall be subject to the consent of Ohog Incorporated.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in The Tundra Drums.

Any party claming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the attached regulations in Title 43 Code of Federal Regulations (CFR), Part 4, Subpart E, as revised. However, pursuant to Public Law 96-487, this decision constitutes the final administrative determination of the Bureau of Land Management concerning navigability of water bodies.

If an appeal is taken, the notice of appeal must be filed in the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances (960), 701 C Street, Box 13, Anchorage, Alaska 99513. Do not send the appeal directly to the Interior Board of Land Appeals. The appeal and copies of pertinent case files will be sent to the Board from this office. A copy of the appeal must be served upon the Regional Solicitor, 701 C Street, Box 34, Anchorage, Alaska 99513.

The time limits for filing an appeal are:

1. Parties receiving service of this decision by personal service or certified mail, return receipt requested, shall have thirty days from receipt of this decision to file an appeal.

2. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who failed or refused to sign their return receipt and parties who received a copy of this decision by regular mail which is not certified, return receipt requested, shall have until April 7, 1983 to file an appeal.

Any party known or unknown who is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land and management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are

Ohog Incorporated, Ohogamiut, via Russian Mission, Alaska 99657

Calista Corporation, 516 Denali Street, Anchorage, Alaska 99501.

Ann Johnson,

Chief, Branch of ANCSA Adjudication.

[FR Doc. 83-5806 Filed 3-7-83; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Migratory Bird Hunting; Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: This notice announces that representatives of the U.S. Fish and Wildlife Service will be in attendance at meetings of the Atlantic, Mississippi, Central, Pacific, and National Flyway Councils at the following times and locations.

DATES:

March 19, 1983—Atlantic Flyway Council, 1 p.m.

March 20, 1983

—Mississippi Flyway Council, 9 a.m.
—Central Flyway Council, 8:30 a.m.
—Pacific Flyway Council, 10:00 a.m.
—National Waterfowl Council, 3 p.m.

ADDRESS: Council meetings will be held at the Radisson Muehlebach Hotel, Kansas City, Missouri, as follows:

Atlantic Flyway Council, Room 4, Mezzanine Level;

Mississippi Flyway Council, Trianon D, Trianon Level;

Central Flyway Council, Muehlebach A, Mezzanine Level;
Pacific Flyway Council, Lido Room, Trianon Level;
National Waterfowl Council, Colonial Ballroom, Mezzanine Level.

FOR FURTHER INFORMATION CONTACT: John P. Rogers, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, telephone AC 202–254–3207.

SUPPLEMENTARY INFORMATION: Flyway Councils are organizations of State conservation agencies which cooperate with the U.S. Fish and Wildlife Service and the Canadian Wildlife Service in migratory bird management and research programs. Their meetings are scheduled in conjunction with the 48th North American Wildlife and Natural Resources Conference to be held March 18–23, 1983, at the Radisson Muehlebach Hotel, Kansas City, Missouri. Although the U.S. Fish and Wildlife Service is not a member of these councils, it will be represented at the above meetings to facilitate discussions of various migratory bird management and research programs, many of which are conducted jointly with the Service.

Dated: March 2, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-5801 Filed 3-7-83; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Texaco U.S.A. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 4408, Block 547, West Cameron Area, Offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Mangement Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 837–4720, Ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Mnerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: February 28, 1983.

John L. Rankin,

Acting Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-5825 Filed 3-7-83; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed developoment and production plan.

SUMMARY: This Notice announces that Chevron U.S.A. Inc., Unit Operator of the South Bay Marchand Federal Unit Agreement No. 14–08–001–3915, submitted on February 18, 1983, a proposed supplemental plan of development/production describing the activities it proposes to conduct on the South Bay Marchand Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9:00 a.m. to 3:30 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 837–4720, ext. 226.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in development and production plans available to affected States, executives of affected local governments, and other interested parties became effective on December 13, 1979 (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: February 28, 1983.

John L. Rankin,

Acting Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-5826 Filed 3-7-83; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: This Notice announces that Exxon Company, U.S.A., Unit Operator of the Eugene Island Block 330 Federal Unit Agreement Nos. 14–08–0001–16928 and 14–08–0001–16929, submitted on February 11, 1983, a proposed supplemental plan of development/production describing the activities it proposes to conduct on the Eugene Island Block 330 Federal Unit.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the plan and that it is available for public review at the offices of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 N. Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9:00 a.m. to 3:00 p.m., 3301 N. Causeway Blvd., Metairie, Louisiana 70002, phone (504) 837–4720, ext. 226.

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Dated: February 28, 1983.

John L. Rankin,

Acting Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-5827 Filed 3-7-83; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Death Valley National Monument Natural and Cultural Resources Management Plan

Pursuant to Section 102(2)(c) of the National Environmental Policy Act, the Department of the Interior has prepared a plan for the management of natural and cultural resources in Death Valley National Monument. Copies of the plan and record of decision are available at the following locations:

Superintendent, Death Valley National Monument, Death Valley, California 92328

Regional Director, Western Region Office/National Park Service, 450 Golden Gate Avenue, San Francisco, California 94102

National Park Service, Department of the Interior, 18th and C Street NW., Washington, D.C. 20240

Record of Decision—Death Valley National Monument Natural and Cultural Resources Management Plan

I. The Decision

The National Park Service has decided to adopt the natural and cultural resources management plan as presented in the Death Valley National Monument Final Environmental Impact Statement (FES 82–48). This final plan was released to the public on November 3, 1982. The final plan is a modification of the draft plan and statement (DES 81–47) which generated significant public controversy when it was released in 1981. While most people accepted the concept of burro removal from the monument, many either felt that the 10-year time frame was too long, or that shooting the burros was unacceptable. Consequently, the National Park Service held meetings with a consortium of animal protection groups and developed the final plan which provides for a live removal program that will be accomplished in three years.

The goals of this plan are to restore those natural areas of the monument that have been altered, and to maintain or enhance existing conditions in the natural and cultural environment. To this end, the plan proposes methods to maintain, perpetuate, or restore natural ecosystems where possible, and to ameliorate or modify those degrading factors that are impossible to eliminate. It also proposes research to be used as a basis for sound management decisions and corrective actions. The plan will guide resources management activities at the monument for an indefinite period. Individual projects will be assessed annually. Additional NEPA compliance may be required for non-burro actions.

A. Natural Resources

In order to restore natural ecosystems within the monument, the plan proposes removal of those exotic species wherever feasible. Exotic animals in Death Valley include feral burros and horses, domestic livestock, and mosquito fish; exotic plants include tamarisk (salt cedar), Russian thistle, hornwort, and palms.

The plan proposes to remove all burros from the monument in a three-year period beginning in the fall of 1983. The plan calls for a cooperative effort between the National Park Service and a consortium of participating animal protection groups. The National Park Service will provide for a humane roundup of all animals that will be transported to a central holding facility. The animal protection groups will accept all captured animals for adoption. Construction of fences to exclude burros from the west side of the monument is not anticipated; however, construction of approximately 40 miles of fence will be required to ensure exclusion of domestic livestock from a 100,000-acre area on the east side of the monument.

Mosquito fish are currently being removed from the waters at Scotty's Castle, and the plan proposes to continue this practice in all the Death Valley waters to avoid competition with pupfish. Tamarisk will be eliminated from approximately 200 acres of the monument by cutting and herbicide treatment. Russian thistle, a dryland weed, is common in many disturbed portions of the monument, including approximately 300 acres near Harrisburg Flats and Skidoo, other old mining sites, and along roadsides. Date and Washington palms that are not part of the historic scene will be removed from individual springs. Hornwort, an aquatic plant with dense growth, will be removed from Saratoga Springs.

Projects proposed to restore natural conditions include obliteration of unused facilities, reclamation of disturbed lands, restoration of water sources, and management of fire. Actions enhancing public safety will be the first priority, followed by environmental restoration of disturbed lands that are important to wildlife survival or that are visually intrusive. About 350 mine shafts and exploration holes that are considered dangerous will be filled or fenced in and debris will be removed. Approximately 600 to 700 miles of abandoned roads will be obliterated. The existing network of usable roads, and those which are historically significant, will be retained.

Approximately 2,700 to 3,000 acres, including mining areas that are not historically or acheologically significant in the vicinity of Skidoo and Chloride City, will be regraded and revegetated. Revegetation will be done with native species by reseeding and planting of seedlings.

At least 53 sources of water that have been altered by human activities or burros, will be restored and rehabilitated in order to provide a dependable source of water for wildlife. If this fails, artificial watering devices such as small water catchment dams or wildlife guzzlers will be constructed. These devices, particularly the guzzlers, will be constructed as a last resort when all other efforts to restore water supplies have failed. Only the minimum necessary construction needed to counteract human activities will be done to provide water for wildlife.

The plan proposes several studies and continuing research programs that will provide a comprehensive, reliable information base and resolutions to resources management problems. These proposed studies include an engineering study to investigate design alternatives that will return minor floods and a portion of major floods to the historical channel down Furnace Creek Wash. Other studies will determine hydrologic systems (aquifers) feeding Death Valley springs, establish baseline information, and offer alternate strategies to ensure future water supplies to the monument, as well as ensure compliance with state water quality standards.

Helicopter surveys, waterhole counts, and photographic monitoring will be used to determine mule deer and bighorn populations. The plan proposes to continue habitat monitoring and regular censuses of the Devils Hole pupfish population. Concurrent with removal of feral and trespass animals and replanting of disturbed areas, vegetation will be monitored to determine the rate of recovery. Monitoring will include establishment of permanent and temporary transects, exlosures, and other conventional research methods.

B. Cultural Resources

The plan's proposals for archeology are as follows: Identification and analysis of collected artifacts will be

used to determine site significance; and archeological survey will be conducted with a sample site large enough to make predictions for the entire monument; and an intensive archeological survey will be conducted in heavy use areas and regular monitoring of these sites will be instituted.

Proposals for historic resources include oral interviews with individuals who can supply first-hand data on Death Valley history, a historic resources study on the history of exploration and surveying in Death Valley, and historic structures reports to cover preservation projects at Scotty's Castle and Ranch.

Historic structures that will be stabilized and preserved include Scotty's Castle, Keane Wonder historic Site, Eagle Borax Works, and the Skidoo National Register property.

II. The Alternatives

The following alternatives were considered in the planning process.

A. No action.

Alternate Methods of Achieving Environmental Restoration With Total Removal of Burros

B. Remove burros by trapping and shooting followed by boundary fencing.

C. Totally remove burros with emphasis on those methods allowing the largest number to be removed alive.

D. Totally remove burros by direct reduction.

Alternate Methods of Achieving Partial Restoration With Retention of Some Feral Burros

E. Retain present population levels.

F. Retain burros in some existing herds.

G. Establish a burro viewing area.

Other Methods that Might be Included to Achieve Either Partial or Total Removal

H. Remove burros by sterilizing.

I. Use immobilizing drugs.

J. Exclude burros by adding boundary fences.

Infeasible Alternatives

K. Introduce predators.

L. Introduce equine diseases.

M. Ship burros to Mexico.

N. Sell carcasses.

III. Mitigating Measures

All practicable means to avoid or minimize harm have been adopted, including but not limited to the following specific measures.

A. Natural Resources

Portable traps and corrals will be used in all areas to reduce environmental damage caused by trailing and trampling activity at a fixed site. Corrals and overnight campsites will be placed on previously disturbed or bare ground rather than undisturbed areas where possible. All traps and corrals will be removed when no longer needed.

Traps will not be set in areas where native animals might be injured. Fences will be built only as a last resort and only in areas where it is considered absolutely necessary.

All captured animals will be freeze-branded or permanently marked to identify escaped or intentionally released animals.

Where needed, clearing of brush or trees for boundary fences will be done by hand. The clearing width will be 6 feet in open brush areas and 10 feet in forested areas to provide adequate sight distance and to prevent injury to livestock or wildlife.

Minimal work will be done at each spring to ensure a dependable supply of water to wildlife. Restoration work will be designed to minimize environmental alteration and aesthetic intrusions.

When needed, water storage tanks will be placed undergound to reduce visual intrusion.

Guzzler catchment aprons will be used only if flash flood potential weights against use of rock dams. They will be fenced to prevent structural damage from trampling animals.

The chemical used to remove mosquito fish will be toxic to fishes only; therefore, other aquatic organisms will not be affected. Mosquito fish are the only fish present in these areas.

Hand-cutting of tamarisk and direct application of herbicides by hand will prevent injury to native mesquite in mixed stands.

Tree-cutting will not be done during the nesting season in order to minimize disruption to nesting birds.

Plantings of native species will be made after removal of non-native plants to prevent quick regrowth of weeds. Similar planting on disturbed and regraded areas will prevent growth of weeds and reduction of soil by erosion.

Previously disturbed demonstration areas will be selected for replanting, and revegetation techniques used at pilot areas will be applied elsewhere to ensure the most effective methods.

Local native seed sources will be used to ensure replanting with genetically similar or identical indigenous stock.

Nurseries will be fenced to prevent seedling damage from trampling by people and damage by rodents and rabbits.

During construction of the boundary fence in the Sarcobatus Flat area, a botanist will be onsite to ensure that damage to *Lathyrus hitchcockianus* is minimized or avoided. Distribution of this plant has been mapped.

B. Cultural Resources

Archeological clearance surveys of proposed boundary fence alignments or portions of alignments will be done prior to installation. Areas proposed for corrals and traps will be archeologically investigated before construction.

Historic and archeological evaluation will precede spring rehabilitation and guzzler installment.

Before the removal of abandoned structures and materials, or the grading, scarification, and revegetation of old roads and disturbed areas, each site will be investigated and inventoried for potential cultural resources, especially within or near archeological or historic properties listed on or proposed for listing on the National Register of Historic Places.

Repair, restoration, or stabilization of cultural sites will be accomplished in accordance with NPS policies and in compliance with the procedures of the Advisory Council on Historic Preservation (36 CFR Part 800).

The state historic preservation officers of California and Nevada have reviewed the effects of the plan on cultural resources. A memorandum of agreement, which has been signed by both states and by the Advisory Council, became effective in August 1982.

Prior to any work efforts, springs will be inventoried by hydrologists, biologists, historians, and archeologists, who will make recommendations on how to minimize impacts on natural and cultural resources.

C. Visitors

In accordance with manufacturer's safe handling recommendations, the time of fish treatment for mosquito fish removal will be selected to coincide with a time that water is not used to irrigate a food crop. The treatment area will be monitored for 24 hours to ensure that people do not use the water and to evaluate efficiency of treatment. Treatment time will occur during low visitation to reduce visitor inconvenience. At the end of the treatment period, an oxidant will be used to remove all traces of toxicant.

D. Feral Burros

Corrals and traps will be supervised to ensure that captured animals have adequate food and water and that they do not suffer injury. Camps will be set

up at portable corrals to maintain a constant watch.

Experienced government employees will round up and transport captured animals to reduce stress and to ensure humane treatment of the animals.

Schedules for transporting animals from trap sites to portable corrals will be arranged to minimize stress on animals, and gathering activities will be scheduled to avoid overloading the capacity of the central holding facility.

The central holding facility will be constructed to prevent overcrowding and stress. It will be large enough to handle 800 to 1,000 animals, and the arrangement of corrals will allow for separation of jacks from pregnant jennies, and jennies with foals from other animals.

Veterinarian services will be available at a central facility to ensure that animals receive proper care.

To ensure coordination of a complex plan and avoidance of stress to captured animals, a program review committee of National Park Service, Bureau of Land Management, and representatives from each of the participating animal protection groups will meet regularly and as needed to coordinate activities and work plans.

To prevent accidental disease transmission to remaining burros, horses, and native wildlife, no captured burros will be returned to monument lands.

IV. Rationale for the Decision

Significant public controversy was generated over the preferred alternative contained in the *Draft Environmental Impact Statement*. In addition to comments received at two public meetings attended by 75 persons, about 230 comments were received on the draft statement. As a result of this controversy, the National Park Service met with a number of animal protection groups to seek a more acceptable plan. These discussions eventually led to the development of a memorandum of agreement between the National Park Service and a coalition of animal protection groups. From this agreement, the final plan has been developed.

Twenty-nine written and telephone comments were received on the final plan and environmental statement between November 3, 1982 and January 10, 1983. There were 4 Federal, 1 state (Nevada Clearinghouse consolidated response), 1 county, 5 organizations, and 18 individual responses. No comments were received from California agencies or the state clearinghouse. Two individuals opposed the plan; all other individuals and organizations selected (preferred) or supported the plan.

During the comment period, the National Park Service requested formal consultation pursuant to Section 7 on endangered species from the U.S. Fish and Wildlife Service. The biological opinion of the U.S. Fish and Wildlife Service documenting the fact that the plan, as proposed, will promote conservation of the endangered Devils Hole pupfish is on file.

Following review of the document by the California and Nevada state historic preservation officers, memorandums of agreement with both states regarding management of cultural resources were approved.

Dated: February 19, 1983.

Howard H. Chapman,

Regional Director, Western Region, National Park Service.

[FR Doc. 83-5847 Filed 3-7-83; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 25, 1983. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, D.C. 20243. Written comments should be submitted by March 23, 1983.

Carol D. Shull,

Chief of Registration, National Register.

CONNECTICUT

New London County

Groton, *Groton Bank Historic District*, Roughly bounded by the Thames River, Broad, Cottage, and Latham Sts.

GEORGIA

Chatham County

Savannah, *Slotin Building*, 101 W. Broad St.

Lumpkin County

Dahlonega, *Dahlonega Commercial Historic District*, Chestatee, Park, and Main Sts.

Mitchell County

Pelham, *Pelham Commercial Historic District*, Roughly bounded by RR tracks, church, Blythe, Jackson Sts. and Hand Ave.

Thomas County

Thomasville, *Gordon Avenue Apartments*, 424 Gordon Ave.

HAWAII

Hawaii County

Puako vicinity, *Puako Petroglyph Archeological District*, Puako Beach Dr.

Honolulu County

Honolulu, *Podmore, Joseph W., Building*, 202–206 Merchant St.

Kauai County

Kapaa vicinity, *Opaekaa Road Bridge*, Opaekaa Rd.

INDIANA

St. Joseph County

South Bend, *Judie, James A., House*, 1515 E. Jefferson Blvd.

Steuben County

Angola vicinity, *Free Church*, Old Road 1 N.

LOUISIANA

Assumption Parish

Paincourtville, *St. Elizabeth Catholic Church*, LA 402

Caddo Parish

Shreveport, *Wray-Dickinson Building*, 308 Market St.

Catahoula Parish

Sicily Island vicinity, *Green-Lovelace House*, N of Sicily Island off LA 15

East Carroll Parish

Lake Providence vicinity, *Buckmeadow Plantation House*, NW of Lake Providence off LA 2

Orleans Parish

New Orleans, *Factors Row and Thiberge Buildings*, 401–405 Carondelet and 802–830 Perdido St.

New Orleans, *Federal Fibre Mills Building*, 1101 S. Peters St.

St. Landry Parish

Bunkie vicinity, *White's Chapel United Methodist Church*, S of Bunkie off LA 29

Tensas Parish

St. Joseph vicinity, *Lakewood*, N of St. Joseph on LA 606

MICHIGAN

Calhoun County

Battle Creek, *Arnold, Adam C., Block*, 12–14 E. State St.

Marquette County

Marquette, *Harlow Block*, 100 W. Washington St.

Van Buren County

South Haven, *Bailey, Liberty Hyde, Birthplace*, 903 Bailey Ave.

MISSOURI

Barry County

Monett vicinity, *Marbut, Curtis Fletcher, House*, Off SR BB

Dunklin County

Campbell vicinity, *Owens, Given, House*, Off MO 53

Gasconade County

Drake vicinity, *Ruskaup House*, W of Drake on U.S. 50

Hermann vicinity, *Kotthoff-Weeks Farm Complex*, Off SR J

Howard County

Fayette vicinity, *Greenwood*, MO 5

Jackson County

Kansas City, *Santa Fe Neighborhood Historic District*, Roughly bounded by 27th St., Linwood Blvd., Indiana and Prospect Aves.
Kansas City, *Sophian Plaza*, 4618 Warwick Blvd.

Lafayette County

Higginsville, *Houx-Hoefer-Rehkop House*, 1900 Walnut St.

Nodaway County

Burlington Junction vicinity, *Possum Walk Hotel*, N of Burlington Junction

Pettis County

Sedalia, *Missouri/Sedalia Trust Company*, 322 S. Ohio St.

Schuyler County

Downing, *Downing Railroad Depot*, City Park

St. Charles County

Defiance vicinity, *Wolf-Ruebeling House*, MO 94
St. Louis (Independent City)
Ambassador Theater Building, 411 N. 7th St.
DePaul Hospital, 2415 N. Kingshighway Blvd.
Frisco Building, 906 Olive St.

NEBRASKA

Douglas County

Omaha, *Sacred Heart Catholic Church Complex*, 2218 Binney St.

Scotts Bluff County

Mitchell, *Quivey, M.B., House*, 1462 19th Ave.

NEVADA

Lyon County

Yerington, *Lyon County Courthouse*, 31 S. Main St.

NEW HAMPSHIRE

Cheshire County

Dublin, *Morse, Eli, Farm*, Lake Rd.
Keene, *Colony Block*, 4–7 Central Square
Richmond, *Richmond Community Church*, Fitzwilliam Rd.

Grafton County

Ashland, *Ashland Junior High School*, 12 School St.
Ashland, *Ashland Town Hall*, 10 Highland St.
Ashland, *First Free Will Baptist Church and Vestry*, 13–15 N. Main St.
Bristol, *Central Square Historic District*, 2–27 Central Square, 1 Summer St., 1–3 N. Main St., and 2 S. Main St.

Hillsborough County

Hudson, *Hills House*, 211 Derry Rd.
Wilton vicinity, *Stonyfield Farm (Barrett Farm)*, NW of Wilton on Foster Rd.

Rockingham County

South Hampton, *Currier, Capt., Jonathan, House (South Hampton MRA)*, Hilldale Ave.
South Hampton, *Highland Road Historic District (South Hampton MRA)*, Highland and Woodman Rds.
South Hampton, *Jewell Town District (South Hampton MRA)*, W. Whitehall Rd. and Jewell St.
South Hampton, *Smith's Corner Historic District (South Hampton MRA)*, Main Ave., South, Stagecoach, and Chase Rds.
South Hampton, *Town Center Historic District (South Hampton MRA)*, Main and Hilldale Aves. and Jewell St.
South Hampton, *Woodman Road Historic District (South Hampton MRA)*, Woodman Rd.
Stratham, *Crockett, John, House*, 245 Portsmouth Ave.
Stratham, *Lane, Deacon Samuel and Jabez, Homestead*, Portsmouth Ave.
Stratham, *Wiggin, Cornet Thomas, House*, 249 Portsmouth Ave.

Strafford County

Rochester, *Rochester Commercial and Industrial Historic District*, N. Main, Wakefield, Hanson, S. Main St. and Central Square

NEW MEXICO

Taos County

Hawiri-ouinge

OHIO

Guernsey County

Cambridge, *Berwick Hotel*, 600–615 Wheeling Ave.

Hamilton County

Cincinnati, *Bernheim House*, 195 Greenhills Rd.
Cincinnati, *Cincinnati Tennis Club*, Dexter and Wold Aves.

Holmes County

Millersburg, *Adams, G., House (Millersburg MRA)*, 103 N. Clay St.
Millersburg, *Cary, G. W., House (Millersburg MRA)*, 200 N. Washington St.
Millersburg, *Cary, Hiram W., House (Millersburg MRA)*, 101 N. Clay St.
Millersburg, *Disciple/Christian Church (Millersburg MRA)*, 100 N. Clay St.
Millersburg, *Koch, John E., Jr., House (Millersburg MRA)*, 107 N. Washington St.
Millersburg, *McCormick, N. P., House (Millersburg MRA)*, 103 N. Washington St.
Millersburg, *Millersburg Historic District (Millersburg MRA)*, Jackson, Clay, and Washington Sts.
Millersburg, *St. Peters Catholic Church (Millersburg MRA)*, S. Crawford and Douglas St.

Licking County

Granville vicinity, *Bryn Mawr (Fassett's Folly)*, 3758 Lancaster Rd., SW

Montgomery County

Dayton, *Duncarrick*, Webster and Keowee Sts.
Dayton, *First Lutheran Church*, 138 W. 1st St.

Ottawa County

Lakeside, *Lakeside Historic District*, Roughly bounded by Lake Erie, RR tracks, Poplar and Oak Aves.

OREGON

Linn County

Marion Forks vicinity, *Independence Prairie Ranger Station*, Willamette National Forest

TEXAS

Bell County

Salado, *Anderson House and Store (Salado MRA)*, Main St.
Salado, *Armstrong-Adams House (Salado MRA)*, Main St. and Thomas Arnold Rd.
Salado, *Baines, George Washington, House (Salado MRA)*, Royal St.
Salado, *Barbee-Berry Mercantile Building (Salado MRA)*, Main and Royal Sts.
Salado, *Barton House (Salado MRA)*, Main St.
Salado, *Davis House (Salado MRA)*, Main St.
Salado, *Fowler House (Salado MRA)*, Main St.
Salado, *Holley, Capt. Robert, House (Salado MRA)*, Main St.
Salado, *Jones, Thomas, Mill Archeological Site (Salado MRA)*, Off I–35
Salado, *Pace Memorial Park Archeological Site/Davis Mill Site (Salado MRA)*, Pace Park Dr.
Salado, *Robertson, Col. Elijah Sterling Clack Plantation (Salado MRA)*, I–35
Salado, *Rose House (Salado MRA)*, Royal St. and Rose Way
Salado, *Salado College Archeological Site (Salado MRA)*, Main St.
Salado, *Salado United Methodist Church (Salado MRA)*, Thomas Arnold Rd. and Church St.
Salado, *Stagecoach Inn (Salado MRA)*, Main and Front Sts.
Salado, *Tenney, Levi, House (Salado MRA)*, Pace Park Dr.
Salado, *Twelve Oaks (McKie House) (Salado MRA)*, Center Circle
Salado, *Tyler House (Salado MRA)*, Main St.
Salado, *Vickrey House (Salado MRA)*, Main St.
Salado, *White-Aiken House (Salado MRA)*, I–35

Bexar County

San Antonio, *Wright, L. T., House*, 342 Wilkins Ave.

Gillespie County

Fredericksburg vicinity, *Morris Ranch Schoolhouse*, Morris Ranch Rd.

Harris County

Houston, *Beaconsfield*, 1700 Main St.

Kendall County

Comfort vicinity, *Hygieostatic Bat Roost*, E of Comfort

Travis County

Austin, *Shipe, Col. Monroe M., House*, 3816 Avenue G

VIRGINIA

Roanoke (Independent City)

Roanoke Warehouse Historic District, 109–133 Norfolk Ave., SW

WYOMING

Park County

Yellowstone National Park, *Roosevelt Lodge Historic District (Yellowstone National Park MRA)*, Grand Loop Rd.

[FR Doc. 83-5805 Filed 3-7-83; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 387]

Exemptions for Contract Tariffs; Ogilvie

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Provisional Exemptions.

SUMMARY: Provisional exemptions are granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the below-listed contract tariffs may become effective on one day's notice. These exemptions may be revoked if protests are filed.

DATES: Protests are due within 15 days of publication in the **Federal Register.**

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

or

Tom Smerdon, (202) 275-7277.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in these instances to carry out the trasportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption requests meet the requirements of 49 U.S.C. 10505(a) and are granted subject to the following conditions:

These grants neither shall be constued to mean that the Commission has approved the contracts for purposes of 49 U.S.C. 10713(e) not that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review these contracts and to determine their lawfulness

Sub-No.	Name of Railroad, Contract Number, and Specifics	Review Board [1]	Decided date
835	Richard Ogilvie, Trustee for Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Co., ICC-MILW-C-0032-A, Supplement 1, (Sodium carbonate)	2	2-28-83
836	Canadian Pacific Rail, ICC-CP-C-0002, Supplement 1, (Printing paper)	3	2-28-83

[1] Review Board No. 2, Members Carleton, Williams, and Ewing. Review Board No. 3, Members Krock, Joyce, and Dowell.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

Authority: 49 U.S.C. 10505..

Agatha L. Mergenovich,

Secretary.

[FR Doc.83-5717 Filed 3-7-83; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. MC-43]

Lease and Interchange of Vehicles by Motor Carriers

Decided: February 25, 1983.

Pacific Intermountain Express Co. (No. MC-730), Ryder Truck Lines, Inc. (No. MC-2900), Customized Transportation, Inc. (No. MC-152620, Gemini Trucking, Inc. (No. MC-150934), and Pioneer Trucking, Inc. (No. MC-151707), under common control, petition for waiver of the qualifying requirements prescribed by paragraphs (c), (d), and (e) of Section 1057.22 (Exemption for trip leasing between authorized carriers) of the *Lease and Interchange of Vehicles* regulations (49 CFR Part 1057).

Background

The cited paragraphs set forth some of the conditions which must be met to qualify under § 1057.22 in order to be exempt from most of the requirements of Subpart B (General leasing requirements) and, in particular, *§ 1057.12 Written lease requirements* which among other things, under paragraph (e) requires a 30-day lease where the equipment is to be operated for the authorized carrier by the owner or an employee of the owner. The Commission recently amended § 1057.22 in Ex Parte No. MC-43 (Sub-No. 12), but paragraph (e) of the section was not affected. Its decision has been temporarily stayed by the United States Court of Appeals for the Eleventh Circuit.

Petitioners seek waiver of the essential requirements of the exemption rule. Consequently, although this petition is directed to waiver of the cited paragraphs of the trip-leasing exemption, the petition will be considered as a request for waiver of Subpart B, with the exception of paragraph (c) of § 1057.11 regarding identification of equipment requirements.

We find:

The petitioners are commonly controlled by the parent, IU International Corporation. Such control was approved in proceedings docketed Nos. MC-F-10795, MC-F-14509F, MC-F-14546F, and MC-F-14576.

Granting the petition for waiver of Subpart B (§§ 1057.11 and 1057.12) of the leasing regulations solely with respect to equipment augmented among the petitioners will permit more efficient and economical operations. This waiver will not affect the application of the leasing regulations to a lease between an owner operator and its lessor carrier.

There is no public policy consideration or goal which overrides petitioners' goal of reducing energy consumption, fuel and other costs; and a denial of the petition would offer no protection to the public while preventing the realization of the stated objectives.

It is ordered:

The petition of Pacific Intermountain Express Co. (No. MC-730), Ryder Truck Lines, Inc. (No. MC-2900), Customized Transportation, Inc. (No. MC-152620), Gemini Trucking, Inc. (No. MC-150934), and Pioneer Trucking, Inc. (No. MC-151707), for waiver of Subpart B except paragraph (c) of § 1057.11 is granted solely with respect to equipment leased among the petitioners.

By the Motor Carrier Leasing Board, Board Members J. Warren McFarland, Bernard Gaillard, and John H. O'Brien.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-5817 Filed 3-7-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications; Decision Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsideration; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1181.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 20 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

Agatha L. Mergenovich,

Secretary.

For status, please call Team 1 at 202-275-7992.

Volume No. OP1-FC-76

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC-FC-81142. By decision of February 23, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 1 approved the transfer to MMB CO., a Corporation, Chicago, IL of Certificates NO. MC-128651 and MC-128651 Sub 1, issued September 3, 1969 and September 22, 1982, respectively to CONTINENTAL AIR TRANSPORT CO., INC., Chicago, IL, authorizing the transportation of passengers and their baggage in the same vehicle with passengers, between Milwaukee, WI, and O'Hare International Airport, Chicago, IL, over specified routes; and passengers and their baggage, in the same vehicle with passengers, and express and newspapers, between Chicago, IL, and Milwaukee, WI, over specified routes. Applicants' representative: Richard A. Kerwin, 180 North LaSalle Street, Suite 3620, Chicago, IL 60601.

For status, please call Team 2 at 202-275-7030.

Volume NO. OP2-062

MC-FC-81023. By the decision of February 22, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, Review Board Number 2 approved the transfer to The Conover Exchange, Inc., of Conover, OH, of authority issued to Inter-Freight Transportation, Inc. (Thomas E. Raleigh, Trustee in Bankruptcy), Chicago, IL., in MC-146643 Sub 56 (all), authorizing transportation of such commodities as are dealt in or used by manufacturers and distributors of plastic containers, between points in the U.S., under contract(s) with Hoover Universal, of Georgetown, KY, in (2) MC-146643 Sub 64 (portion), general commodities (except classes A and B explosives and household goods), between points in the U.S., under contract(s) with Fedders Corporation, of Edison, NJ, in (3) MC-148314 Sub 8 (portion), general commodities (except classes A and B explosives), between points in the U.S., under contract(s) with Kal Kan Foods, Inc., of Vernon, CA, in (4) MC-148314 Sub 9X (portion), metal products, between points in the U.S., under contract(s) with Libby, McNeill and Libby, of Worth, IL, including MC-146643 Subs 24 and 33 which it supersedes, and in (5) MC-148314 Sub 9X (portion), pulp paper and related products, between points in the U.S., under contract(s) with St. Regis Paper Co., of Pittsburgh, PA, including a portion of MC-146643 Sub 40 which it supersedes. Representative: Joseph Winter, 29 South LaSalle St., Chicago, IL, transferee and Thomas W. Drexler, 105 West Madison St., Chicago, IL, transferor.

MC-FC-81009. By decision of February 22, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. 1181, Review Board Number 2, approved the transfer to VIP TRUCKING CO., DIVISION OF VIP FREIGHT SYSTEMS, INC., Cleveland, OH, of authority issued to INTER-FREIGHT TRANSPORTATION, INC. (THOMAS E. RALEIGH, TRUSTEE IN BANKRUPTCY), Chicago, IL (I) in Certificates No. MC-148314 (Subs-2, 4, 5, and 6), authorizing the transportation of various specified commodities, between specified points in the U.S., (II) in Permits No. MC-146643 (Sub-2), under contract with Pace Battery Company, of Chicago Heights, IL; (Sub-3) under contract with Ball Corporation, of Muncie, IN; (Sub-12) under contract with Metro Pac Container Corporation, of Dolton, IL; (Sub-25) under contract with Rockwood Industries, Inc., of Denver, CO; (Sub-35) under contract with Peavey Flour Company, of Minneapolis, MN; (Sub-41) under contract with D.S.M. Food Products, Inc., of Detroit, MI; (Sub-44) under contract with Topco Associates, Inc., of Skokie, IL; (Sub-45) under contract with Rand McNally and Company, of Skokie, IL; (Sub-52) under contract with Foseco, Inc., of Brookpark, OH; (Sub-54) under contract with Stone Container Corporation, of Chicago, IL; (Sub-57) under contract with Seaboard Allied Milling Corporation, of Shawnee Mission, KS; (Sub-63) under contract with The Hubinger Company, of Keokuk, IA; (Sub-64-portion) under contract with Belden Corporation, of Geneva, IL, and (Sub-66-portion) under contract with C.F. Mueller Company, of Jersey City, NJ; (III) Permits No. MC-148314 (Sub-8-portion) under contract with Scholle Corporation, of Northlake, IL, and EKCO Products, Inc., of Wheeling, IL; (Sub-10) under contract with W. W. Grainger, Inc., of Chicago, IL; and (Sub-9X) (1)(portion) under contract with Ball Corporation, of Muncie, IN (supersedes MC-146643 (Sub-3)); (4)(portion) under contract with Peavy Flour Company, of Minneapolis, MN (supersedes MC-146643 (Sub-35)), and under contract with D.S.M. Food Products, Inc., of Detroit, MI (supersedes MC-146643 (Sub-41)); (9) under contract with Rand McNally and Company, of Skokie, IL (supersedes MC-146643 (Sub-45)); and (11) under contract with Topco Associates, Inc., of Skokie, IL (supersedes MC-146643 (Sub-44)), authorizing the transportation of various specified commodities, between specified points in the U.S. representatives: Anthony E. Young, 29 South LaSalle St., Suite 350, Chicago, IL, 60603, for transferee, and Thomas W. Drexler, 105 West Madison St., Chicago, IL, 60602, for transferor.

Volume No. OP4-FC-112

For status, please call Team 4 at 202-275-7669.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC-FC-81159, filed December 30, 1982. By decision of February 28, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, Review Board Number 2 approved the transfer to VHR Enterprises, Inc., of Fredonia, NY, of Certificate No. MC-65626 and Sub-Nos. 1, 3, 5, 8, 10, 11, 12, 14, 15, 17, 20, 21, 22, 23, 24, 26, 28, 29, 31, 32, 34, 35, 37, 38, 39, 40, 42X, 43X, and 44X, to FREDONIA EXPRESS, INC., of Fredonia, NY, MC-65626 (Sub-No. 1) issued September 27, 1940, authorizing the transportation of *seed and seed display cases,* between Fredonia, NY and points in PA; (Sub-No. 3), issued May 23, 1942, *macaroni, spaghetti, vegetables, fruits, jellies and canned goods, and empty jars,* between named points in NY and points in PA; (Sub-No. 5), issued December 22, 1941, *foundry and core equipment,* betweem West Newton, PA and Dunkirk, NY; (Sub-No. 8), issued November 20, 1945, *iron and steel products, sulphate of alumina, fresh fruits, and empty containers,* between named points in NY and PA; (Sub-No. 11), issued October 7, 1964,

Malt beverages, between Dunkirk, NY and points in NJ and PA; (Sub-No. 28), issued December 11, 1975, *foodstuffs*, between the facilities of Kraftco Corp. near Kendallville, IN and points in CT, DE, ME, MD, MA, NH, NJ NY, PA, RI, VT, WV, and DC; (Sub-No. 32), issued October 26, 1977, *Food and related products*, between the facilities of Beatrice Food Co., at named points in PA, on the one hand, and, on the other, points in CT, DE, KY, ME, MD, MA, NH, NJ, NY, OH, PA, RI, VA, VT, WV, and DC; (Sub-No. 38), issued January 2, 1981, (1) *glass products, metal products, and clay products*, (2) *molds* and *machinery*, (3) *bottle coating systems*, and (4) *feldspar products and talc products*, between the facilities of Wheaton Industries, at Springfield, KY, on the one hand, and, on the other, points in the U.S. (except AK and HI); (Sub-No. 40), issued February 5, 1981, general commodities (with the usual exceptions), between points in the U.S. (except AK and HI); (Sub-No. 42)X, issued June 29, 1981 which superseded MC–65626 (Sub-No. 37), *various commodities* between named Counties in NJ, on the one hand, and, on the other, points in the U.S.; (Sub-No. 43)X, issued August 21, 1981 which superseded (Sub-Nos. 34, 35, and 39), *such commodities* as are dealt in or used by grocery and food business houses, between points in NY on the one hand, and, on the other, points in MD, NJ, OH, PA, WV, CT, MA, ME, NH, RI VT, VA, NC, SC, GA, FL and AL; (sub-No. 44)X which superseded MC–65626 and Sub-Nos. 10, 12, 14, 15, 17, 20, 21, 22, 23, 24, 26, 29, 31, 35, and E–1 letter notice, (1) *Food and related products*, between named points in NY, CT, DE, ME, MD, MA, MI, NH, NJ, NY, OH, PA, RI, VT and WV, (2) *clay, concrete, glass or stone products, metal products machinery, transportation equipment* and *instrument* and *photographic goods*, between named points in NJ, NY, and IN and points in MA, CT, DE, PA, and RI, (3) *textile mill products, lumber*, furniture and fixtures, between named points in PA, on the one hand, and on the other, points in MA, CT, and RI, (4) *chemicals* and *related products*, between points in Erie County, PA, and Chautauqua County, NY, and (5) *rubber and plastic products*, between Chautauqua County, NY and points in PA. Representative: E. Stephen Heisley, 1919 Pennsylvania Ave. NW., Washington, DC 20006, (202) 828–5062, for transferee.

[FR Doc. 83-5814 Filed 3-7-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Decisions; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers. The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and household goods brokers are governed by Supart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 CFR Part 1160, published in the **Federal Register** on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 29 U.S.C. 10922(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker—that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act or 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L. Mergenovich,

Secretary.

Note.— All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract." Applications filed under 49 U.S.C. 10922(c)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passengers are duly noted.

Please direct status inquiries to Team 4 at (202) 275–7669.

Volume No. OP4–114

Decided: February 28, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 166286, filed February 15, 1983. Applicant: REFRIGERATED FOOD TRANSPORT, INC., 28090 Robinson Canyon Rd., Carmel, CA 93923. Representative: Lawrence Marquette, P.O. Box 629, Carmel Valley, CA 93924, (408) 625–2031. Transporting, (1) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions); (2) *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds; (3) *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner ot the motor vehicle in such vehicle; (4) *used household goods* for the account of the United States Government incident to the performance of pack-and-crate service on behalf of the Department of Defense, between points in the U.S. (except AK and HI); (5) As a *broker of general commodities* (except household goods), between points in the U.S.; and (6) *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

Note.— Because this application in Part (6) includes issues subject to a finding of public convenience and necessity, as well as fitness only, in Parts 1 through 5 it will be published in two volumes of this **Federal Register** issue. Parts 1 through 5 will be published in VOL 111. Part 6 will be published in VOL 114.

Volume No. OP4–110

Decided: February 28, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 1846 (Sub-15), filed February 18, 1983. Applicant: W. D. KIBLER TRUCKING, INC., 60 S. State Ave., Indianapolis, IN 46201. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240, (317) 632–7373. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with Universal Flavor Corporation, of Indianapolis, IN.

MC 119837 (Sub-30), filed February 22, 1983. Applicant: OZARK MOTOR LINES, INC., 27 W. Illinois, Memphis, TN 38106. Representative: Ralph D. Golden, Suite 2348, 100HN. Main, Memphis, TN 38103, 1 (901) 526–1122. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 127346 (Sub-11), filed February 15, 1983. Applicant: HALL'S FAST MOTOR FREIGHT, INC., 330 Oak Tree Ave., So. Plainfield, NJ 07080. Representative: Ronald I. Shapss, 450 Seventh Ave., New York, NY 10123, (212) 239–4610. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S (except AK and HI), under continuing contract(s) with Jaypack Crating & Distribution, Inc. of So. Plainfield, NJ.

MC 144447 (Sub-2), filed February 18, 1983. Applicant: TREXLER TRUCKING, INC., Rt. 1, Box 538, Gold Hill, NC 28071. Representative: William P. Farthing, Jr., 1100 Cameron-Brown Bldg., Charlotte, NC 28204, (704) 372–6730. Transporting *building materials and supplies*, between points in Cabarrus, Davidson, Forsyth, Guilford, Mecklenburg, Rowan, and Surry Counties, NC, on the one hand, and, on the other, points in VA, SC, GA, WV, KY, TN, and AL.

MC 150157 (Sub-7), filed February 15, 1983. Applicant: REGENCY MOTOR FREIGHT, INC., 26600 Van Born Rd., Dearborn Heights, MI 48125. Representative: Martin J. Leavitt, 22375 Haggerty Rd., P.O. Box 400, Northville, MI 48167, (313) 292–4370. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in the U.S. (except AK and HI).

MC 151516 (Sub-8), filed February 15, 1983. Applicant: JOSEPH W. HYDE d.b.a. H.D. DELIVERY SERVICE, P.O. Box 1268, Ogden, UT 84402. Representative: Irene Warr, 311 S. State St., Ste. 280, Salt Lake City, UT 84111, (801) 531–1300. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in WA, OR, CA, NV, AZ, NM, UT, WY, CO, MT, and ID.

MC 151886 (Sub-2), filed February 11, 1983. Applicant: BERGER TRANSPORT, INC., 3856 Knapp St. Rd., Oshkosh, WI 54901. Representative: James A. Spiegel, Olde Towne Office Park, 6333 Odana Rd., Madison, WI 53719, (608) 273–1003. Transporting *petroleum and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Marathon Petroleum Company, of Findlay, OH.

MC 161466, filed February 11, 1983. Applicant: RODNEY AND RANDALL PAGE d.b.a. PAGE BROTHERS TRUCKING, R.R. 1, Box 89, DeSmet, SD 57231. Representative: A. J. Swanson, P.O. Box 1103, Sioux Falls, SD 57101, (605) 335–1777. Transporting (1) *building materials*, between points in IA, MN, ND, and SD, on the one hand, and, on the other, points in CA, IA, ID, IL, IN, MN, MT, OR, SD, and WA, (2) *lumber wood products*, between points MN, on the one hand, and, on the other, points in AR, CO, IA, IL, IN, KS, KY, MI, MO, MT, ND, NE, OH, OK, SD, TX, UT, WI, and WY, (3) *chemicals and related products*, between points in SD, on the one hand, and, on the other, points in IA, MN, and NE, (4) *food and related products*, between points in SD, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (5) *metal products*, between points in SD, on the one hand, and, on the other, points in IA, IL, IN, MN, NE, and ND.

MC 162166, filed February 10, 1983. Applicant: O & B TRANSPORTATION, INC., 2118 S. Fern, Ontario, CA 91761. Representative: Donald R. Hedrick, P.O. Box 4334, Santa Ana, CA 92702, (714) 667–8107. Transporting (1) *chemicals and related products*, between points in Orange County, CA, on the one hand, and, on the other, points in OR, WA, UT, CO, AZ, KS, TX, OK and LA, and (2) *pulp, paper and related products, plastic products, lighting fixtures*, and *furniture* and *fixtures*, between points in CA, OR, WA, MT, WY, ID, UT, AZ, NM, CO and NV.

MC 164836, filed February 15, 1983. Applicant: PAUL WAGNER, d.b.a. RIVERSIDE FARMS, P.O. Box 868, Olla, LA 71465. Representative: Doyle G. Owens, P.O. Box 7735, Beaumont, TX 77706, (713) 898–8086. Transporting *Mercer commodities*, (1) between points in TX and LA, and (2) between points in TX and LA, on the one hand, and, on the other, points in Mobile and Baldwin Counties, AL and Oklahoma and Craig Counties, OK.

MC 165977, filed February 11, 1983. Applicant: WAYNE THYGESON, d.b.a. THYGESON TRUCKING, Middle River, MN 56737. Representative: Robert N. Maxwell, P.O. Box 2471, Fargo, ND 58108, (701) 237–4223. Transporting *such commodities* as are dealt in by distributors of food and related products, between points in MN and ND, on the one hand, and, on the other, points in the U.S. (except AK AND HI).

MC 166306, filed February 16, 1983. Applicant: G–F TRUCKING, 5711 Florin Perkins Rd. No. G, Sacramento, CA 95828. Representative: Charles J. Grant, 8308 Reed Ct., Sacramento, CA 95826, (916) 381–7570. Transporting *building materials, clay, concrete, glass or stone products*, and *cat litter*, between points in the U.S. (except AK and HI), under

continuing contract(s) with Oil Dri Corp. of America, of Chicago, IL.

MC 166317, filed February 17, 1983. Applicant: LINDA J. WIND, d.b.a. GOLDEN WIND TRUCKING COMPANY, 16585 W. 51st Ave., Golden, CO 80401. Representative: Marvin Rosenberg, 918 White Birch Land Wantagh, NY 11793, (516) 735–7659. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Inter State Express, Inc., of Brooklyn, NY.

MC 166326, filed February 17, 1983. Applicant: KENEARL, INC., d.b.a. S&S MOVING & STORAGE, 290 Central Ave., Orange, NJ 07050. Representative: Charles K. Smith (same address as applicant), (201) 678–7744. Transporting *household goods* and *office and modular furniture*, between points in NJ, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Volume No. OP4–113

Decided: February 28, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 45626 (Sub-79), filed February 16, 1983. Applicant: VERMONT TRANSIT LINES, INC., 135 St. Paul St., Burlington, VT 05401. Representative: R. H. Steele, Jr., (same address as applicant), (802) 862–9671. Over regular routes, transporting *passengers*, between Portsmouth, NH and Portland, ME, over (a) Interstate Hwy 95 and (b) U.S. Hwy 1. Note: Applicant seeks to provide regular-route service in intrastate, interstate, or foreign commerce under 49 U.S.C. 10922(c)(2)(B).

MC 166337, filed February 18, 1983. Applicant: PAC-TEN, INC., Slover Ave., Fontana, CA 92335. Representative: Frederick J. Coffman, 1824 N. Kelly Ave., P.O. Box 1455, Upland, CA 91786, (714) 981–9981.Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in CA, OK, TX, NM, AZ, NV, CO, OR, WA, and UT, under continuing contract(s) with Nutro, Inc., of City of Industry, CA, and Haley Bros., Inc., of Los Angeles, CA.

MC 166346, filed February 18, 1983. Applicant: PEGASUS HORSE TRANSPORTATION, INC., P.O. Box 163, Isanti, MN 55040. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55113, (612) 542–1121. Transporting *horses*, other than ordinary, between points in the U.S. (except AK and HI).

MC 166347, filed February 18, 1983. Applicant: TANDEM TRANSPORT, INC., 2611 S. 5th St., Milwaukee, WI 53207. Representative: Michael J. Wyngaard, 150 E. Gilman St., Madison, WI 53703, (608) 256–7444. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in WI, on the one hand, and, on the other, points in IL, IN, IA, KY, MD, MI, MN, MO, NY, NC, OH, PA, TN, VA, WV, and DC.

[FR Doc. 83-5619 Filed 3-7-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (fitness-only); Motor Common Carriers of Passengers (fitness-only); Motor Contract Carriers of Passengers; Property Brokers (other than household goods). The following applications for motor common or contract carriage of property and for a broker of property (other than household goods) are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** on December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common or contract carriage of passengers filed on or after November 19, 1982, are governed by Subpart D of the Commission's Rules of Practice. See 49 CFR Part 1160, Subpart D, published in the **Federal Register** on November 24, 1982, at 49 FR 53271. For compliance procedures, see 49 CFR 1160.86. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E.

These applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce, over irregular routes unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

Please direct status inquiries to Team 2, (202) 275–7030.

Volume No. OP2–083

Decided: February 25, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier.

MC 166052, filed February 2, 1983. Applicant: H. WILLIAMS BUS RENTAL AND TOURS, 400 Bagley St., Detroit, MI 48226. Representative: Robert J. Brooks, 1828 L St. NW., Suite 1111, Washington, D.C. 20036, (202) 466–3892. Transporting *passengers*, in special and charter operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

For the following, please direct status calls to Team 3 at 202–275–5223.

Volume No. OP3–68

Decided: February 27, 1983.

By the Commission, Review Borad No. 2, Members Carleton, Williams, and Ewing.

MC 150844 (Sub-4), filed February 3, 1983. Applicant: WILLIAM J. KLEIN, P.O. Box 334, Douglassville, PA 19518. Representative: Nicholas E. Chimicles, 110 Montgomery Ave., Bala Cynwyd, PA 19004, (215) 667–1700. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 158365 (Sub-2), filed February 7, 1983. Applicant: J & J SERVICE, INC., 122 W. Central Ave., Lake Wales, FL 33853. Representative: Gerald D. Colvin, Jr., 601–09 Frank Nelson Bldg., Birmingham, AL 35203, (205) 251–2881. Transporting, for or on behalf of the United States Government, general commodities (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S. (except AK and HI).

MC 166135, filed February 8, 1983. Applicant: TERRENCE L. COMBS AND TYRUS R. BAYLE, d.b.a. T. AND T. LEASING, 215 Main Street, Wattsburg, PA 16442. Representative: Ida M. Combs, 14400 Main Box 233, Wattsburg, PA 16442, (814) 739–2610. Transporting (1) for or on behalf of the United States Government *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), (2) *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, and (3) *food and other edible products and byproducts intended for human consumption*, (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, between points in the U.S.

Volume No. OP3–70

Decided: February 28, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 114535 (Sub-4), filed February 11, 1983. Applicant: ZANETTI BUS & FAST EXPRESS, INC., P.O. Box 846, Rock Springs, WY 82901. Representative: James Robert Evans, 145 W. Wisconsin Ave., Neenah, WI 54956, (414) 722–2848. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded special and charter transportation.

MC 121805 (Sub-19), filed February 8, 1983. APPLICANT: ARKANSAS FREIGHTWAYS, INC., 401 W. Stephenson Ave., P.O. Box A, Harrison, AR 72601. Representative: William P. Jackson, 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210, (703) 525–4050. Transporting *general commodities*, between Sheridan, AR, on the one hand, and, on the other points in the U.S. (except AK and HI). Condition: The Certificate to be issued to the extent it authorizes the transportation of explosives, will be conditioned to expire 5 years from its date of issuance, subject to extension upon appropriate petition.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 165945, filed February 11, 1983. APPLICANT: MID–KANSAS BUS SERVICE, INC., Route 2, Newton, KS 67114. Representative: William B. Barber, P.O. Box 1979, Topeka, KS 66601, (913) 234–0565. Transporting *passengers*, in special and charter operations, between in points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded special and charter transportation.

MC 166154, filed February 8, 1983. APPLICANT: JOSEPH E. LACIOFOLI, JR., 15 Ellen Circle, Old Bridge, NJ 08857. Representative: George A. Olsen, P.O. Box 357 Gladstone, NJ 07934. (201) 234–0301. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 166205, filed February 10 1983. APPLICANT: BRIANT L. CAPPS, d.b.a. BRIANT L. CAPPS TRUCKING, 628 Balfor Court, Virginia Beach, VA 23462. Representative: Frank L. Willard, First Merchants National Bank Bldg., Suite 1001, Norfolk, Va 23510, (804) 627–0070. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle in such vehicle, betweens points in the U.S. (except AK and HI).

MC 166214, filed February 10, 1983. APPLICANT: TAILGATE BUS CO., INC., 1522 K St. N.W., Suite 400, Washington, DC 20005. Representative: Larry Williams (same address as applicant), (202) 789–2909. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded special and charter transportation.

MC 166215, filed February 10, 1983. Applicant: COLT INTERMODAL INC., P.O. Box 22694, Wellshire Sta., 6775 E. Evans Ave., Denver, CO 80222. Representative: Louis A. Harris, Burlington Northern Inc., 1111 Third Ave., Seattle, WA 98101, (206) 625–6766. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 166234, filed February 14, 1983. Applicant: JAY W. NEW, d.b.a. JAY'S TRANSPORT, 6715 Brandt Rd., Carroll, OH 43112. Representative: Jay W. New (same address as applicant), (614) 756–4478. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural and limestone and fertilizers and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S.

MC 166244, filed February 11, 1983. Applicant: R. J. HORTON, d.b.a. R. J. HORTON TRUCKING, 4287 Reona Ave., Sumter, SC 29150. Representative: Anthony L. Keenan, 1385 Iris Dr., Conyers, GA 30208, (800) 241–3666. Transporting *food and other edible products and byproducts* intended for human consumption (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

MC 166305, filed February 15, 1983. Applicant: LEVY SCHOOL BUS COMPANY, 114 East Broad St., Trumbauersville, PA 18970. Representative: Alan R. Squires, 818 Widener Bldg., 1339 Chestnut St., Philadelphia, PA 19107, (215) 536–4567. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded special and charter transportation.

For the following, please direct status calls to Team 4 at 202-275-7669.

Volume No. OP4-111

Decided: February 28, 1983.

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC 12957 (Sub-3), filed February 17, 1983. Applicant: AL'S TOURS, LTD., 301 Sovereign Court, Prospect Center, Suite 203C, Manchester, MO 63011. Representative: Joseph E. Rebman, 314 N. Broadway, Suite 1300, St. Louis, MO 63102, (314) 421-0845. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 35477 (Sub-4), filed February 23, 1983. Applicant: NAVA-HOPI TOURS, INC., P.O. Box 339, Flagstaff, AZ 86002. Representative: James Robert Evans, 145 W. Wisconsin Ave., Neenah, WI 54956, (602) 774-5003. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 106187 (Sub-5), filed February 18, 1983. Applicant: THE FREE ENTERPRISE SYSTEM, INC., 2101 Hamburg Pike, Jeffersonville, IN 47130. Representative: Allison J. Maggiolo, 2556 First National Tower, Louisville, KY 40202, (502) 589-4100. Transporting *passengers*, in charter and special operations, between points in the U.S. (Except HI).

Note.—Applicant seeks to provide privately-funded charter or special transportation.

MC 125057 (Sub-3), filed February 17, 1983. Applicant: ANTELOPE VALLEY BUS, INC., 660 W Avenue L, Lancaster, CA 93534. Representative: James A. Carter (same address as applicant), (805) 948-8421. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 144906 (Sub-6), filed February 22, 1983. Applicant: NORTH OPERATING COMPANY, 39 Little Brook Rd., Springfield, NJ 07081. Representative: John L. Alfano, 550 Mamaroneck Ave., Harrison, NY 10528, (201) 354-3529. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 150346 (Sub-2), filed February 16, 1983. Applicant: TRANS-CAL TOURS, INC., 70 Dorman Ave., Suite 3, San Francisco, CA 94124. Representative: Michael J. Stecher, 100 Bush St., Suite 410, San Francisco, CA 94104, (415) 421-6743. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter or special transportation.

MC 153966 (Sub-2), filed February 16, 1983. Applicant: SEAPORT COACH, INC, 2 Dennison Ave., Mystic, CT 06355. Representative: Gerald A. Joseloff, 410 Asylum St., Hartford, CT 06103, (203) 728-0700. Transporting (1) *passengers*, in charter and special operations, between points in the U.S., and (2) shipments weighing 100 pounds or less if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation in (1) above.

MC 166286, filed February 15, 1983. Applicant: REFRIGERATED FOOD TRANSPORT, INC., 28090 Robinson Canyon Rd., Carmel, CA 93923. Representative: Lawrence Marquette P.O. Box 629, Carmel Valley, CA 93924, (408) 625-2031. Transporting (1) for or on behalf of the United States Government, *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions); (2) *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds; (3) *food and other edible products and byproducts intended for human consumption* (except alcholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle; (4) *used household goods* for the account of the United States Government incident to the performance of pack-and-crate service on behalf of the Department of Defense, between points in the U.S. (except AK and HI); (5) As a *broker of general commodities* (except household goods), between points in the U.S.; and (6) *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

Note.—Because this application in Part (6) includes issues subject to a finding of public convenience and necessity, as well as fitness only, in parts 1 through 5, it will be published in two volumes of this **Federal Register** issue. Parts 1 through 5 will be published in Vol. No. III. Part 6 will be published in Vol. No. 114.

MC 166357, filed February 22, 1983. Applicant: JAMES W. STEVENS, Box 832, Winona, MN 55987. Representative: James W. Stevens (same address as applicant) (507) 452-2045. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, between points in the U.S. (except AK and HI).

MC 166366, filed February 23, 1983. Applicant: FAMILY BUS SERVICE, INC., 3 Railroad Place, Maspeth, NY 11378. Representative: Arthur Wagner, 342 Madison Ave., New York, NY 10173, (212) 755-9500. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

[FR Doc. 83-5818 Filed 3-7-83; 8:45 am]

BILLING CODE 7035-01-M

[No. Mc-F-15070]

Motor Carriers; Robin Express Transfer, Inc.—Purchase Exemption—Drum Transportation Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1) *Procedures—Handling Exemptions Filed by Motor Carriers*, 363 I.C.C. 113 (1982), Robin Express Transfer, Inc. (Robin), a non-carrier, and Drum Transportation Company (Drum) (MC-138381) seek an exemption from the requirement under section 11343 of prior regulatory approval for the acquisition by Robin of all of Drum's operating rights. Russell L. Siegel and his wife, own all of Robin's stock. Russell Siegel also owns one-third of the stock of Siegel Transfer, Inc. (MC-154722).

DATES: Comments must be received within 30 days after the date of publication in the **Federal Register.**

ADDRESSES: Send comments to:

(1) Motor Section, Room 2379, Interstate Commerce Commission, Washington, D.C. 20423

and

(2) Petitioner's representative, J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101

Comments should refer to No. MC-F-15070.

FOR FURTHER INFORMATION CONTACT: Joyce Lannon, (202) 275-7992.

SUPPLEMENTARY INFORMATION: Please refer to the petition for exemption, which may be obtained free of charge by contacting petitioner's representative. In

the alternative, the petition for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

Decided: March 2, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-5821 Filed 3-7-83; 8:45 am]

BILLING CODE 7035-01-M

[No. MC-F-15130; OP4F-115]

Motor Carriers; Transx LTD.—Control Exemption—P.M.E., L.T.D.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures—Handling Exemptions Filed by Motor Carriers,* 363 I.C.C. 113 (1982), Transx Ltd. (MC-153367); and P.M.E. Ltd. (MC-14537); seek an exemption from the requirement under section 11343 of prior regulatory approval for the acquisition by Transx of all of the outstanding stock of P.M.E. Shelmar International, Inc. owns all the outstanding shares of P.M.E.

DATES: Comments must be received within 30 days after the date of publication in the Federal Register.

ADDRESSES: Send comments to:

(1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423,

and

(2) Petitioner's representative, Robert L. Cope, 1730 M Street, NW., Washington, D.C. 20036

Comments should refer to No. MC-F-15130.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275-7949.

SUPPLEMENTARY INFORMATION: Please refer to the petition for exemption, which may be obtained free of charge by contacting petitioner's representative. In the alternative, the petition for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

Decided: March 2, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-5820 Filed 3-7-83; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 347, Sub-1]

Rail Carriers; Coal Rate Guidelines; Nationwide

AGENCY: Interstate Commerce Commission.

ACTION: Notice of intent to prepare an environmental impact statement and statement of energy impact and proposed scope.

SUMMARY: On May 17, 1978 (43 FR 22151), the Commission instituted a proceeding in Ex Parte No. 347, the purpose of which was to establish freight rate guidelines for railroad movements of western coal. The scope of that proceeding subsequently was expanded to include nationwide coal freight rates. Recently, the Commission issued for this proceeding a revised notice of proposed policy (48 FR 8362, February 28, 1983), which should be read in conjunction with this notice. It has been determined that this proceeding could have potentially significant impacts on the quality of the human environment and energy efficency and consumption. Accordingly, consistent with applicable provisions of the National Environmental Policy Act of 1969, and the Energy Policy and Conservation Act of 1975, an environmental impact statement and statement of energy impact will be prepared.

Comments: Interested persons are encouraged to comment in writing on the proposed scope of the study (see **"SUPPLEMENTARY INFORMATION,"** below), particularly for the purpose of identifying and/or refining pertinent issues. Written comments should be mailed to: Section of Energy and Environment, Room 4143, Interstate Commerce Commission, 12th Street and Constitution Ave., NW., Washington, D.C. 20423.

DATES: Written comments should be filed at the above address on or before April 7, 1983.

FOR FURTHER INFORMATION CONTACT: Carl Bausch or Robert Maestro at (202) 275-0800.

SUPPLEMENTARY INFORMATION: We have determined that the establishment of new maximum rate guidelines may have potentially significant impacts on the environment if rail rates for coal increase to a point where electric-generating utilities shift to other transportation modes or alternative fuels, or delay or cancel conversions to coal-fired plants. For example, the utilities might:

(a) Employ for the movement of needed coal other transportation modes, such as barge, truck or coal slurry pipeline;

(b) Rely to a greater extent on fuel sources other than coal, such as nuclear power;

(c) Build, delay, or cancel new generating facilities, or purchase power from elsewhere;

(d) Convert or delay conversion to coal-fired generating facilities; and

(e) Purchase coal from sources closer to generating facilities or from foreign markets.

Such decisions might affect environmentally sensitive areas, including air quality, safety, noise levels, energy consumption, wildlife, and water quality in major geographic regions of the United States. Accordingly, we believe it necessary to study further (and receive public comments on) exactly what impact our proposed coal rate guidelines will have on energy and the environment. Furthermore, we will examine and hope to receive suggestions on how to minimize any adverse effects.

The environmental document envisioned here will address the likely impacts of the Commission's action under various rate-level scenarios. A no-action alternative, as well as the effects of phasing to different rate levels, also will be examined. The study will focus on effects within the electric-generating utility industry only, since that industry, for which sufficient data exists, may be most substantially affected. Additionally, the document will consider the effect of the proposed action on potential overseas demand for domestic coal.

The analysis will not be site-specific, nor can it be. To a large extent, any impacts will result from changes brought about by electric-generating utilities' responses to this proceeding. While such responses cannot be known in advance, they may be fairly predicted with the assistance of computer models which will be used in this study.

Models presently contemplated for use in this study include the Department of Energy's International Coal Trade Model, Coal Supply and Transportation Model, and Intermediate Forecast System Model. Each of these models will be used to simulate annual coal freight rate increases of 5, 10, and 15 percent over time. Additionally, the models will be used to simulate immediate coal freight rate increases of 50, 75, 100, and 150 percent for purposes of projecting environmental impacts in 1990 and beyond.

It is anticipated that these models will produce, among other things, estimates of regional coal production, modal

transportation shifts, and the quantity and quality of coal consumed. They also will estimate the United States' market share of world coal shipments. Incremental changes in data for each model run will provide the bases for projections of environmental impacts associated with alternative rate scenarios.[1]

There are undoubtedly other computer models which, for proprietary or other reasons, cannot be made available to us. Nevertheless, we would welcome the submission, at the earliest practicable time, of concisely documented predictive data from such models. Model runs should be based on input substantially similar to that outlined above. Any data submitted should fully explain deviations and also include an explanation of the major assumptions contained in each model.

Comments are solicited, particularly with respect to the following:

(1) Specifically, what environmental and energy impacts will arise from the proposed action?

(2) Are there any ways to minimize any potentially significant adverse impacts on energy and the environment, assuming that the proposed coal rate guidelines are adopted?

(3) Are there realistic alternatives to the proposed action (*e.g.*, a different phase-in) which would mitigate adverse environmental and energy impacts while assisting the railroads to attain revenue adequacy?

(4) Is there another reasonable analytical approach better suited to predicting environmental and energy impacts associated with the proposed action? Please be specific.

(5) What are the most reliable data sources for purposes of developing quantifiable environmental and energy impacts associated with (a) movement of coal by rail and by alternative transportation modes, and (b) use of coal and use of alternative fuels?

(6) Is the importation of foreign coal by the electric-generating utility industry a realistic utility response to increases in the delivered price of domestic coal? What magnitude of delivered price increases might prompt importation?

(7) Are there perceptible market constraints which would limit the percentage increases in coal freight rates irrespective of the percentage increases authorized by the proposed action? Please identify and explain. How might the existence of any such constraints affect electric-generating utility industry responses?

(8) Is eastern coal technologically and economically substitutable for western coal in existing coal-burning electric-generating facilities? Could widespread substitution of eastern coal for western coal be accomplished within the framework of existing air quality standards? To what extent might the upper limits of such standards be approached? Please supply relevant data.

(9) What are the comparative environmental impacts of nuclear versus coal-fired electric generation when considered in the context of their respective fuel cycles? Please supply relevant data.

(10) How might the proposed action and alternatives affect other important considerations such as tax initiatives or incentives, export coal policy, and the like?

Decided: February 15, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre, Simmons, and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-5816 Filed 3-7-83; 8:45 am]

BILLING CODE 7035-01-M

[1] These models will likely overestimate the energy and environmental impacts of our proposed rate policy because they predict how coal markets would respond to specified *average* increases in coal transportation rates. Our proposed policy does not, however, require carriers to increase rail rates to each shipper by the specified average; rather, it permits differential rate increases based on the carriers' estimate of individual utilities' demand elasticities. We request comments on the significance of the potential overestimates which result from use of these models, and on how best to compensate for them.

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

[Redelegation of Authority No. 99.1.201]

Mission Directors and A.I.D. Principal Officers, Africa; Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1, from the Assistant to the Administrator for Management dated May 1, 1973 (38 FR 12836), as amended, I hereby redelegate to the Mission Directors or A.I.D. Principal Officers for the following countries the authorities listed below:

Countries

Benin
Botswana
Burundi
Cameroon
Cape Verde
Central Africa Republic
Chad
Comoros
Congo
Djibouti
Ethiopia
The Gambia
Ghana
Guinea
Guinea-Bissau
Kenya
Lesotho
Liberia
Madagascar
Malawi
Mali
Mauritania
Mauritius
Mozambique
Niger
Nigeria
Principe
Rwanda
Sao Tome
Senegal
Seychelles
Sierra Leone
Somalia
Sudan
Swaziland
Tanzania
Togo
Uganda
Upper Volta
Zaire
Zambia
Zimbabwe

Authorities

1. To sign U.S. Government contracts (including nonpersonal services contracts with individuals for the services of the individual alone), cooperative agreements, grants (other than grants to foreign governments or agencies thereof), or amendments thereto provided that the aggregate amount of each individual contract, cooperative agreement, or grant does not exceed $100,000 or local currency equivalent.

2. To sign personal services contracts provided the aggregate amount of each individual contract does not exceed $250,000.

3. To make findings and determinations with respect to advance payments to nonprofit organizations that collect no fee for services including those financed by Federal Reserve letters of credit, and to approve the contract, cooperative agreement, and grant provisions relating to such advance payments.

4. To approve advances under nonpersonal services contracts with individuals.

5. To sign Operational Program Grants (OPGs) to U.S. private voluntary organizations (PVOs), as defined in Appendix 4B, Chapter 4, AID Handbook 3, *Project Assistance*, and in accordance with the procedures of Chapter 4, AID Handbook 13, *Grants*, on the following basis:

(a) Such OPG's shall not exceed $1,000,000 for the life of project;

(b) Each OPG shall constitute assistance; and

(c) The post must be advised by AID/W, prior to signing the OPG that Congress has been notified and funds have been allotted;

(d) The requirements set out above are in addition to any requirements imposed by Redelegation of Authority 133.4 and Africa Bureau Delegation of Authority 140.

The authorities delegated in 1, 2, and 3 above may be redelegated in writing, in whole or in part, by said Mission Director or AID Principal Officer at his/

her discretion to the person or persons designated by the Mission Director or AID Principal Officer as Contracting Officer. Such redelegation shall remain in effect until such designated person or persons ceases to hold the office of Contracting Officer or until the redelegation is revoked by the Mission Director or AID Principal Officer, whichever shall first occur. The authority so redelegated by the Mission Director or AID Principal Officer, may not be further redelegated.

The authorities delegated in 4 and 5 above are not redelegable.

The authorities delegated herein are to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within A.I.D. and are not in derogation of the authority of the Director of the Office of Contract Management to exercise any of the functions herein redelegated.

The authorities herein redelegated may be exercised by duly authorized persons who are performing the functions of the Mission Director or A.I.D. Principal Officer in an acting capacity.

The following Redelegations of Authority are hereby revoked:

1. Redelegation of Authority No. 99.1.10 (38 FR 27627), dated October 1, 1973, as amended.

2. Redelegation of Authority No. 99.1.11 (38 FR 27627), dated October 1, 1973, as amended.

3. Redelegation of Authority No. 99.1.12 (38 FR 27627), dated October 1, 1973, as amended.

4. Redelegation of Authority No. 99.1.28 (38 FR 29096 and 29097), dated October 1, 1973, as amended.

5. Redelegation of Authority No. 99.1.52 (38 FR 29095 and 29096), dated October 1, 1973, as amended.

6. Redelegation of Authority No. 99.1.54 (38 FR 29096), dated October 1, 1973, as amended.

7. Redelegation of Authority No. 99.1.57 (39 FR 41267), dated Nobember 11, 1974, as amended.

8. Redelegation of Authority No. 99.1.58 (39 FR 41267), dated November 11, 1974, as amended.

9. Redelegation of Authority No. 99.1.59 (39 FR 41267), dated November 11, 1974, as amended.

10. Redelegation of Authority No. 99.1.60 (39 FR 41266), dated November 11, 1974, as amended.

11. Redelegation of Authority No. 99.1.61 (39 FR 41267), dated November 11, 1974, as amended.

12. Redelegation of Authority No. 99.1.62 (39 FR 41266), dated November 11, 1974, as amended.

13. Redelegation of Authority No. 99.1.63 (39 FR 41266), dated November 11, 1974, as amended.

14. Redelegation of Authority No. 99.1.94 (42 FR 64164), dated November 22, 1977, as amended.

15. Redelegation of Authority No. 99.1.99 (43 FR 34858), dated July 27, 1978, as amended.

16. Redelegation of Authority No. 99.1.100 (43 FR 34858), dated July 27, 1978, as amended.

17. Redelegation of Authority No. 99.1.102 (43 FR 51887), dated October 1, 1978, as amended.

18. Redelegation of Authority No. 99.1.103 (43 FR 51886), dated October 1, 1978, as amended.

19. Redelegation of Authority No. 99.1.104 (43 FR 51887), October 1, 1978, as amended.

20. Redelegation of Authority No. 99.1.109 (45 FR 9141), dated November 15, 1979, as amended.

21. Redelegation of Authority No. 99.1.110 (45 FR 9140 and 9141), dated November 15, 1979, as amended.

22. Redelegation of Authority No. 99.1.111 (45 FR 9140), dated November 15, 1979, as amended.

23. Redelegation of Authority No. 99.1.112 (45 FR 6187 and 6188), dated January 4, 1980, as amended.

24. Redelegation of Authority No. 99.1.113 (45 FR 14719 and 14720), dated February 15, 1980, as amended.

25. Redelegation of Authority No. 99.1.116 (46 FR 2408 and 2409), dated December 3, 1980, as amended.

26. Redelegation of Authority No. 99.1.117 (46 FR 2409), dated September 19, 1979, as amended.

27. Redelegation of Authority No. 99.1.118 (46 FR 2408), dated December 3, 1980, as amended.

28. Redelegation of Authority No. 99.1.96 (43 FR 52569), dated November 1, 1978, as amended.

Any official actions taken prior to the effective date hereof by officers duly authorized pursuant to delegations revoked hereunder are hereby continued in effect, according to their terms until modified, revoked or superseded by action of the officer to whom I have delegated relevant authority in this delegation.

This redelegation of authority is effective on date of signature.

Dated: February 17, 1983.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 83-5733 Filed 3-4-83; 8:45 am]

BILLING CODE 6116-01-M

[Redelegation of Authority No. 99.1.200]

Mission Directors and A.I.D. Principal Officers, Asia; Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1, from the Assistant to the Administrator for Management dated May 1, 1973 (38 FR 12836), as amended, I hereby redelegate to the Mission Directors or A.I.D. Principal Officers in the following countries the authorities listed below:

Countries

Bangladesh	India
Burma	Sri Lanka
Fiji	Thailand

Authorities

1. To sign U.S. Government contracts (including nonpersonal service contracts with individuals for the services of the individual alone), cooperative agreements, grants (other than grants to foreign governments or agencies thereof), or amendments thereto provided that the aggregate amount of each individual contract, cooperative agreement, or grant does not exceed $100,000 or local currency equivalent.

2. To sign personal services contracts provided the aggregate amount of each individual contract does not exceed $250,000.

3. To make findings and determinations with respect to advance payments to nonprofit organizations that collect no fee for services including those financed by Federal Reserve letters of credit, and to approve contract, cooperative agreement, and grant provisions relating to such advance payments.

4. To approve advances under nonpersonal services contracts with individuals.

5. To sign Operational Program Grants (OPGs) to U.S. private voluntary organizations (PVOs), as defined in Appendix 4B, Chapter 4, AID Handbook 3, *Project Assistance*, and in accordance with the procedures of Chapter 4, AID Handbook 13, *Grants*, on the following basis:

(a) Such OPG's shall not exceed $1,000,000 for the life of project;

(b) Each OPG shall constitute assistance; and

(c) The post must be advised by AID/W, prior to signing the OPG that Congress has been notified and funds have been allotted.

The authorities delegated in 1, 2, and 3 above may be redelegated in writing, in

whole or inpart, by said Mission Director or A.I.D. Principal Officer at his/her discretion to the person or persons designated by the Mission Director or A.I.D. Principal Officer as Contracting Officer. Such redelegation shall remain in effect until such designated person or persons ceases to hold the office of Contracting Officer or until the redelegation is revoked by the Mission Director or A.I.D. Principal Officer, whichever shall first occur. The authority so redelegated by the Mission Director or A.I.D. Principal Officer, may not be further redelegated.

The authorities delegated in 4 and 5 above are not redelegable.

The authorities delegated herein are to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within A.I.D. and are not in derogation of the authority of the Director of the Office of Contract Management to exercise any of the functions herein redelegated.

The authorities herein redelegated may be exercised by duly authorized persons who are performing the functions of the Mission Director or A.I.D. Principal Officer in an acting capacity.

The following Redelegations of Authority are hereby revoked:

1. Redelegation of Authority No. 99.1.15 (38 FR 29338), dated October 1, 1973, as amended.

2. Redelegation of Authority No. 99.1.22 (38 FR 27849), dated October 1, 1973, as amended.

3. Redelegation of Authority No. 99.1.65 (40 FR 2596), dated January 14, 1975, as amended.

4. Redelegation of Authority No. 99.1.73 (40 FR 45452), dated September 19, 1975, as amended.

5. Redelegation of Authority No. 99.1.93 (42 FR 64165), dated November 22, 1977, as amended.

6. Redelegation of Authority No. 99.1.108 (44 FR 45275), dated July 20, 1979, as amended.

7. Redelegation of Authority No. 99.1.95 (43 FR 24927 and 24928), dated May 26, 1978, as amended.

8. Redelegation of Authority No. 99.1.106 (44 FR 2051), dated December 18, 1978, as amended.

9. Redelegation of Authority No. 99.1.21 (38 FR 27849), dated October 1, 1973, as amended.

10. Redelegation of Authority No. 99.1.101 dated September 18, 1978, as amended.

Any official actions taken prior to the effective date hereof by officers duly authorized pursuant to delegations revoked hereunder are hereby continued in effect, according to their terms until modified, revoked, or superseded by action of the officer to whom I have delegated relevant authority in this delegation.

This redelegation of authority is effective on date of signature.

Dated February 23, 1983.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 83-5732 Filed 3-4-83; 8:45 am]

BILLING CODE 6116-01-M

[Redelegation of Authority No. 99.1.202]

Mission Directors and A.I.D. Principal Officers, Latin America/Caribbean; Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1, from the assistant to the Administrator for Management dated May 1, 1973 (38 FR 12836), as amended, I hereby redelegate to the Mission Directors or A.I.D. Principal Officers in the following countries or for the following regional programs the authorities listed below:

Countries

Belize
Bolivia
Costa Rica
Dominican Republic
Ecuador
El Salvador
Guatemala
Guyana
Haiti
Honduras
Jamaica
Mexico
Nicaragua
Panama
Paraguay
Peru
Regional Development Office for the Caribbean
Regional Office of Central American Programs/Guatemala

Authorities:

1. To sign U.S. Government contracts (including nonpersonal service contracts with individuals for the services of the individual alone), cooperative agreements, grants (other than grants to foreign governments or agencies thereof), or amendments thereto provided that the aggregate amount of each individual contract, cooperative agreement, or grant does not exceed $100,000 or local currency equivalent.

2. To sign personal services contracts provided the aggregate amount of each individual contract does not exceed $250,000.

3. To make findings and determinations with respect to advance payments to nonprofit organizations that collect no fee for services including those financed by Federal Reserve letters of credit, and to approve the contract, cooperative agreement, and grant provisions relating to such advances payments.

4. To approve advances under nonpersonal services contracts with individuals.

5. To sign Operational Program Grants (OPGs) to U.S. private voluntary organizations (POVs), as defined in Appendix 4B, Chapter 4, AID Handbook 3, *Project Assistance,* and in accordance with the procedures of Chapter 4, AID Handbook 13, *Grants,* on the following basis:

(a) Such OPG's shall not exceed $1,000,000 for the life of project;

(b) Each OPG shall constitute assistance; and

(c) The post must be advised by AID/W, prior to signing the OPG that Congress has been notified and funds have been allotted.

The authorities delegated in 1, 2, and 3, above may be redelegated in writing, in whole or in part, by said Mission Director or A.I.D. Principal Officer at his/her discretion to the person or persons designated by the Mission Director or A.I.D. Principal Officer as Contracting Officer. Such redelegation shall remain in effect until such designated person or persons ceases to hold the office of Contracting Officer or until the redelegation is revoked by the Mission Director or A.I.D. Principal Officer, whichever shall first occur. The authority so redelegated by the Mission Director or A.I.D. Principal Officer, may not be further redelegated.

The authorities delegated in 4 and 5 above are not redelegable.

The authorities delegated herein are to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within A.I.D. and are not in derogation of the authority of the Director of the Office of Contract Management to exercise any of the functions herein redelegated.

The authorities herein redelegated may be exercised by duly authorized persons who are performing the functions of the Mission Director or A.I.D. Principal Officer in an acting capacity.

The following Redelegations of Authority are hereby revoked:

1. Redelegation of Authority No. 99.1.20 (38 FR 27848), dated October 1, 1973, as amended.

2. Redelegation of Authority No. 99.1.29 (38 FR 29096), dated October 1, 1973, as amended.

3. Redelegation of Authority No. 99.1.31 (38 FR 29095), dated October 1, 1973, as amended.

4. Redelegation of Authority No. 99.1.34 (38 FR 29094), dated October 1, 1973, as amended.

5. Redelegation of Authority No. 99.1.35 (38 FR 28852), dated October 1, 1973, as amended.

6. Redelegation of Authority No. 99.1.37 (38 FR 29236), dated October 1, 1973, as amended.

7. Redelegation of Authority No. 99.1.38 (38 FR 28851), dated October 1, 1973, as amended.

8. Redelegation of Authority No. 99.1.39 (38 FR 29236), dated October 1, 1973, as amended.

9. Redelegation of Authority No. 99.1.40 (38 FR 29499), dated October 1, 1973, as amended.

10. Redelegation of Authority No. 99.1.41 (38 FR 29236), dated October 1, 1973, as amended.

11. Redelegation of Authority No. 99.1.42 (38 FR 29499), dated October 1, 1973, as amended.

12. Redelegation of Authority No. 99.1.43 (38 FR 29499), dated October 1, 1973, as amended.

13. Redelegation of Authority No. 99.1.44 (38 FR 29237), dated October 1, 1973, as amended.

14. Redelegation of Authority No. 99.1.45 (38 FR 29237), dated October 1, 1973, as amended.

15. Redelegation of Authority No. 99.1.46 (38 FR 29237), dated October 1, 1973, as amended.

16. Redelegation of Authority No. 99.1.47 (38 FR 29500), dated October 1, 1973, as amended.

17. Redelegation of Authority No. 99.1.48 (38 FR 29237 and 29238), dated October 1, 1973, as amended.

18. Redelegation of Authority No. 99.1.49 (38 FR 29498), dated October 1, 1973, as amended.

19. Redelegation of Authority No. 99.1.77 (41 FR 15878), dated April 5, 1976, as amended.

20. Redelegation of Authority No. 99.1.80 (41 FR 36044), dated August 19, 1976, as amended.

21. Redelegation of Authority No. 99.1.92 (42 FR 64164 and 64165), dated October 1, 1977, as amended.

22. Redelegation of Authority No. 99.1.95 (43 FR 24927 and 24928), dated May 26, 1978, as amended.

Any official actions taken prior to the effective date hereof by officers duly authorized pursuant to delegations revoked hereunder are hereby continued in effect, according to their terms until modified, revoked, or superseded by action of the officer to whom I have delegated relevant authority in this delegation.

This redelegation of authority is effective on date of signature.

Dated: February 23, 1983.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 83-5734 Filed 3-4-83; 8:45 am]

BILLING CODE 5116-01-M

[Redelegation of Authority No. 99.1.203]

Mission directors and A.I.D. Principal Officers, Near East; Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1, from the assistant to the Administrator for Management dated May 1, 1973 (38 FR 12836), as amended, I hereby redelegate to the Mission Directors or A.I.D. Principal Officers in the following countries the authorities listed below:

Countries

	Oman
Italy	Portugal
Jordan	Syria
Lebanon	Tunisia
Morocco	Yemen

Authorities

1. To sign U.S. Government contracts (including nonpersonal service contracts with individuals for the services of the individual alone), cooperative agreements, grants (other than grants to foreign governments or agencies thereof), or amendments thereto provided that the aggregate amount of each individual contract, cooperative agreement, or grant does not exceed $100,000 or local currency equivalent.

2. To sign personal services contracts provided the aggregate amount of each individaul contract does not exceed $250,000.

3. To make findings and determinations with respect to advance payments to nonprofit organizations that collect no fee for services including those financed by Federal Reserve letters of credit, and to approve the contract, cooperative agreement, and grant provisions relating to such advance payments.

4. To approve advances under nonpersonal services contracts with individuals.

5. To sign Operational Program Grants (OPGs) to U.S. private voluntary organizations (PVOs), as defined in Appendix 4B, Chapter 4, AID Handbook 3, *Project Assistance*, and in accordance with the procedures of Chapter 4, AID Handbook 13, *Grants*, on the following basis:

(a) Such OPG's shall not exceed $1,000,000 for the life of project;

(b) Each OPG shall constitute assistance; and

(c) The post must be advised by AID/W, prior to signing the OPG that Congress has been notified and funds have been allotted.

The authorities delegated in 1, 2, and 3 above may be redelegated in writing, in whole or in part, by said Mission Director or A.I.D. Principal Officer at his/her discretion to the person or persons designated by the Mission Director or A.I.D. Principal Officer as Contracting Officer. Such redelegation shall remain in effect until such designated person or persons ceases to hold the office of Contracting Officer or until the redelegation is revoked by the Mission Director or A.I.D. Principal Officer, whichever shall first occur. The authority so redelegated by the Mission Director or A.I.D. Principal Officer, may not be further redelegated.

The authorities delegated in 4 and 5 above are not redelegable.

The authorities delegated herein are to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within A.I.D and are not in derogation of the authority of the Director of the Office of Contract Management to exercise any of the functions herein redelegated.

The authorities herein redelegated may be exercised by duly authorized persons who are performing the functions of the Mission Director or A.I.D. Principal Officer in an acting capacity.

The following Redelegations of Authority are hereby revoked:

1. Redelegation of Authority No. 99.1.26 (38 FR 29097), dated October 1, 1973, as amended.

2. Redelegation of Authority No. 99.1.51 (38 FR 29095), dated October 1, 1973, as amended.

3. Redelegation of Authority No. 99.1.53 (38 FR 29096), dated October 1, 1973, as amended.

4. Redelegation of Authority No. 99.1.67 (40 FR 12296), dated March 1, 1975, as amended.

5. Redelegation of Authority No. 99.1.68 (40 FR 25077), dated June 1, 1975, as amended.

6. Redelegation of Authority No. 99.1.70 (40 FR 19852 and 19853), dated April 30, 1975, as amended.

7. Redelegation of Authority No. 99.1.90 (43 FR 43468), dated August 13, 1977, as amended.

8. Redelegation of Authority No. 99.1.115 (45 FR 73186), dated October 17, 1980, as amended.

9. Redelegation of Authority No. 99.1.119 (46 FR 26673), dated April 24, 1981, as amended.

10. Redelegation of Authority No. 99.1.95 (43 FR 24927 and 24928), dated May 16, 1978, as amended.

Any official actions taken prior to the effective date hereof by officers duly authorized pursuant to delegations revoked hereunder are hereby continued in effect, according to their terms until modified, revoked, or superseded by action of the officer to whom I have delegated relevant authority in this delegation.

This redelegation of authority is effective on date of signature.

Dated: February 23, 1983.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 83-5735 Filed 3-4-83; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF JUSTICE

Agency Forms Under Review

March 3, 1983.

OMB has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all the entries grouped into new forms, revisions, or extensions. Each entry contains the following information:

(1) The name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available); (2) The office of the agency issuing this form; (3) The title of the form; (4) The agency form number, if applicable; (5) How often the form must be filled out; (6) Who will be required or asked to report; (7) an estimate of the number of responses; (8) An estimate of the total number of hours needed to fill out the form; (9) An indication of whether Section 3504(H) of Pub. L. 96-511 applies; (10) The name and telephone number of the person or office responsible for OMB review.

Copies of the proposed forms and supporting documents may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions about the items on this list should be directed to the reviewer listed at the end of each entry and to the Agency Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

DEPARTMENT OF JUSTICE

Agency Clearance Officer—Larry E. Miesse—202-633-4312.

New

(Not Previously Approved or Expired More Than 6 Months Ago)

- Bureau of Justice Statistics

Department of Justice
Survey of Inmates of Local Jails
Nonrecurring
Individuals or households
Inmates in local jails: 5,800 responses; 4,350 hours; not applicable under 3504(h)
David Reed—395-7231

Extension (Adjustment to Burden Only)

- Immigration and Naturalization Service

Alien Crewman's Landing Permit
On occasion
Individuals or households
Alien Crewmen entering the United States; 300,000 responses; 25,000 hours; not applicable under 3504(h)
David Reed, 395-7231

Larry E. Miesse,

Department Clearance Officer, Systems Policy Staff, Office of Information Techology, Justice Management Division, Department of Justice.

[FR Doc. 83-5843 Filed 3-7-83; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Additions to Annual List of Labor Surplus Areas

Correction

In FR Doc. 83-3234 appearing on page 5823 in the issue of Tuesday, February 8, 1983, make the following correction in column two. Under the heading "Additions to the Annual List of Labor Surplus Areas" the entry for Ohio should appear as follows:

Labor surplus area	Civil jurisdiction included
Ohio	
Darke County	Darke County.
Balance of Stark County	Stark County less Canton City.

BILLING CODE 1505-01-M

[Employment and Training Order No. 1-83]

Designation of Certifying Officers—Worker Adjustment Assistance

1. *Purpose.* To designate certifying officers to carry out functions required under the worker adjustment assistance provisions of the Trade Act of 1974 (29 CFR Part 90).

2. *Directives Affected.* Employment and Training Orders No. 2-81 and 2-82 are superseded.

3. *Background.* Persons designated as certifying officers are assigned responsibilities under 29 CFR Part 90; this includes the authority to determine eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974 (19 U.S.C. 2273).

Under Secretary's Order No. 3-81, all worker adjustment assistance functions of the Secretary of Labor were delegated to the Assistant Secretary for Employment and Training, including the authority to determine eligibility of groups of workers to apply for adjustment assistance.

4. *Designation of Officials.* Officials of the Employment and Training Administration designated as certifying officials are:

a. Assistant Secretary for Employment and Training
b. Associate Assistant Secretary for Employment and Training
c. Administrator, Office of Employment Security
d. Director, Unemployment Insurance Service, UIS
e. Director, Office of Program Management, UIS
f. Deputy Director, Office of Program Management, UIS
g. Director, Office of Legislation and Actuarial Services, UIS
h. Deputy Director, Office of Legislation and Actuarial Services, UIS

5. *Effective Date.* This Order is effective on March 8, 1983.

Signed at Washington, D.C., this 22nd day of February 1983.

Albert Angrisani,

Assistant Secretary of Labor.

[FR Doc. 83-5870 Filed 3-7-83; 8:45 am]

BILLING CODE 4510-30-M

Federal Supplemental Compensation; Change 1 to General Administration; Letter No. 2-83

Section 544 of the Surface Transportation Assistance Act of 1982 of (Pub. L. 97-424) amended the Federal Supplemental Compensation (FSC) Act of 1982 by increasing the maximum amount of FSC payable in all States. The Technical Corrections Act of 1982

(Pub L. 97–448) amended the FSC Act to specify that interstate claimants are entitled to the lesser amount of FSC payable in the agent or liable State. The Department of Labor issued implementing instructions to all State employment security agencies with Change 1 to General Administration Letter Number 2–83. Change 1 is published below.

Dated: March 2, 1983.

Albert Angrisani,

Assistant Secretary of Labor.

Dated: February 17, 1983
Expiration Date: November 30, 1983
Directive: General Administration Letter No. 2–83, Change 1
To: All State Employment security Agencies
From: Royal S. Dellinger, Acting Administrator for Regional Management
Subject: Federal Supplemental Compensation

1. *Purpose.* To provide instructions for amendments made to the Federal Supplemental Compensation Act of 1982 by Section 544 of the Highway Revenue Act of 1982, title V of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424) and by the Technical Corrections Act of 1982 (Pub. L. 97–448).

2. *References.* The Highway Revenue Act of 1982, the Technical Corrections Act of 1982, Pub. L. 97–248, UIPL 14–81, GAL 21–81, GAL 22–81, GAL 2–83, FL 9–82, RAL 2–82; the Federal-State Extended Unemployment Compensation Act, as amended; 20 CFR Part 615.

3. *Background.* GAL 2–83 provided instructions for implementing the FSC program in all States. Under this Act, eligible workers receive 50 percent of their entitlement to regular benefits up to a maximum of 6 or 8 weeks of benefits (depending on the State's insured unemployment rate), or 10 weeks of benefits in States if an extended benefit period was in effect for any week beginning on or after June 1, 1982.

Section 544 of the Highway Revenue Act of 1982 of (Pub. L. 97–424) amended the FSC Act by increasing the maximum amount of FSC payable in all States. The Technical Corrections Act (Pub. L. 97–448) amended the FSC Act to specify that interstate claimants are entitled to the lesser amount of FSC payable in the agent or liable State. No change was made in the March 31, 1983 expiration date of the FSC program.

4. *Effect of Amendments on prior issuances.* The attached instructions reflect amendments made to the FSC Act.

Instructions for implementing amendments made by the Highway Revenue Act of 1982 are effective for weeks beginning on or after January 9, 1983, and FSC claims filed for weeks beginning prior to the effective date of the amendments will be determined according to GAL 2–83, as published in the **Federal Register** on December 3, 1982.

Instructions for implementing the amendment made by the Technical Corrections Act apply to all claims for FSC, filed on or after September 12, 1982. This is because the amendment is effective as if originally included in the FSC Act.

Part II of the attachment to GAL 2–83 contains the procedures for implementing FSC. Changes to Part II of the attachment to GAL 2–83 are identified by section and subsection. Sections and subsections unchanged by this issuance will continue to apply to claims for and payment of FSC. There are no changes to Part III of GAL 2–83.

5. *Action Required.* Administrators should provide the information and instructions contained herein to the appropriate staff.

6. *Inquiries.* Direct questions to the appropriate Regional Office.

7. *Attachment.* Instructions for implementing the amendments to the Federal Supplemental Compensation Program.

[Attachment to GAL 2–83, Change 1]

Amendments to the Federal Supplemental Compensation Act of 1982—Implementing Instructions

Part I. Explanation of the Amendments

A. Amendments Made by the Highway Revenue Act of 1982

1. *Computation of Maximum FSC Benefits Payable.* The computation of the maximum FSC payable changed from 50 percent to 65 percent of the total amount of regular compensation (including dependents' allowances) payable, up to the maximum FSC payable in the State.

2. *Maximum FSC Payable.* The number of weeks of FSC payable in a State—for weeks which begin on or after January 9, 1983—increases to 16, 14, 12, 10 or 8 weeks as follows:

a. *8 Weeks.* The base level of FSC payable increased from 6 to up to 8 weeks of FSC. Eight weeks of FSC are payable in States with an extended benefit indicator rate (i.e. the most recent 13-week insured unemployment rate) of less than 3.5 percent.

b. *16 Weeks.* States in a period of "higher unemployment" pay up to 16 weeks or FSC. A period of higher unemployment begins the third week after the first week the State's extended benefit indicator rate equals or exceeds 6.0 percent and ends the third week after the first week the State's extended benefit indicator rate drops below 6.0 percent. A "higher unemployment" period must last at least 4 weeks, and may begin as early as the first week which begins on or after January 9, 1983.

c. *14 Weeks.* States which are not in a "higher unemployment" period but were in an extended benefit period any time between June 1, 1982, and the date of enactment of the amendments pay up to 14 weeks of FSC, beginning with the first week which begins on or after January 9, 1983.

d. *12 Weeks.* States in a period of "high unemployment" or which begin an extended benefit period after the date of enactment of the amendments pay up to 12 weeks of FSC. For purposes of the amendments, a "high unemployment" period begins the third week after the first week the State's extended benefit indicator rate equals or exceeds 4.5 percent but is less than 6.0 and ends the third week after the first week the State's extended benefit indicator rate drops below 4.5 percent. A State must stay in a period of "high unemployment" for a minimum of 4 weeks, except it can move to a period of "higher unemployment" at any time after one week in a "high unemployment" period or after the beginning of an extended benefit period. A "high unemployment" period may begin as early as the first week which begins on or after January 9, 1983.

e. *10 Weeks.* States which have not been in an extended benefit period since June 1, 1982 and which do not begin an extended benefit period during the life of the FSC program pay up to a maximum of 10 weeks of FSC if the State is in a period of "intermediate unemployment". A period of "intermediate unemployment" begins the third week after the first week the State's extended benefit indicator rate equals or exceeds 3.5 percent but is less than 4.5 percent and ends the third week after the first week the extended benefit indicator rate drops below 3.5 percent. A State must remain in a period of "intermediate unemployment" at least 4 weeks, but it can move to a period of "high" or "higher" unemployment at any time after 1 week in an "intermediate unemployment" period or it can move to a 12-week duration upon the beginning of a new extended benefit period. An "intermediate unemployment" period may begin as early as the first week which begins on or after January 9, 1983.

f. The additional weeks of FSC provided by the amendments apply solely to weeks of unemployment which

begin on or after the date of enactment of the amendments.

3. *Effect on Prior FSC Recipients.* The increase in weeks of FSC payable and the change in the computation of the maximum FSC payable apply to all future, current and prior FSC recipients including those who have exhausted their entitlement to FSC.

The amendments also contain a special rule which applies to prior exhaustees of FSC, as follows:

a. The weeks occurring after an individual has exhausted his or her entitlement to FSC and prior to the first week beginning on or after January 6, 1983, shall not be counted in determining the two-year limitation (from the end of the individual's recent benefit year) on payment of FSC, and

b. An individual's eligibility for additional weeks of FSC shall not be terminated or limited by reason of any event or failure to meet any eligibility requirement relating to unemployment compensation which occurs after the date of exhaustion of FSC and prior to the first week beginning on or after January 6, 1983.

4. *Modification of the Agreement.* The Secretary of Labor is required, as soon as practicable after enactment, to propose to each State a modification to the agreement entered into under the FSC Act to provide for payments of FSC according to these amendments. If a State fails to enter into the modified agreement within three weeks from the date the Secretary proposes the modification (i.e., the date of the Secretary's letter), the agreement to administer FSC will be considered terminated. The termination of the agreement would be effecitve with the end of the last week which ends on or before such three week period.

5. *Effective Date.* The amendments are effective for weeks beginning on or after the date of enactment. The first compensable week for which additional FSC benefits are payable is the first week beginning on or after January 9, 1983. For this purpose, periods of higher unempolyment, high unempolyment, and intermediate unemployment begin and end with calendar weeks, the same as with extended benefit periods. No change was made in the termination date of the FSC program which is for weeks of unemployment beginning after March 31, 1983.

B. Amendment Made by the Techical Corrections Act

1. *Interstate Claimants.* Individuals filing FSC claims on an interstate basis are entitled to the lesser of:

a. The maximum payable in the agent State; or

b. The maximum payable in the liable State.

2. *Effective Date.* This provision is effective as if it were originally included in the FSC Act.

II. Changes to Part II of the Attachment to GAL 2-83

A. Section A, "Definitions".

A new subsection 6 is added to Section A, *Definitions*, to read as follows.

6. "Amendments" mean the amendments made to the Federal Supplemental Compensation Act by the Highway Revenue Act of 1982 (Pub. L. 97-424) and the Technical Corrections Act of 1982 (Pub. L. 97-448).

B. Section B, "Beginning and Ending of the FSC Program"

A new paragraph is added to Section B, to read as follows:

The amendments in the Highway Revenue Act of 1982 require the Secretary of Labor, as soon as practicable after January 6, 1983, to propose to each State a modification to the agreement entered into under the FSC Act to provide for payments of FSC in accordance with the amendments. If a State fails to enter into the modified agreement within 3 weeks from the date of the Secretary's letter proposing a modification of the agreement, the agreement to administer the FSC program in the State will be terminated effective with the end of the last week which ends on or before such 3-week period.

C. Section C, "Eligibility Requirements for Federal Supplemental Compensation"

1. Subsection g. under subsection 1, *Basic Eligibility Requirements*, is amended to read as follows.

g. Have a benefit year which ended *not* more than two years prior to the beginning date of the week he/she is claiming FSC, *except* that in determining whether this two-year limitation applies, the SESA shall disregard any weeks which begin prior to the first week beginning on or after January 6, 1983, which began after an individual had exhausted his or her entitlement to FSC under the original Federal Supplemental Compensation Act.

2. The following new subsection 8 is added to Section C.

8. *Special Eligibility Rule.* An individual's eligibility for additional weeks of FSC under the amendments to the FSC Act shall not be limited or terminated by reason of any event or failure to meet any requirement of State or Federal law relating to eligibility for benefits occurring after the date of exhaustion of the individual's entitlement under the original FSC Act and prior to the first week beginning on or after January 6, 1983. The eligibility requirements to which this rule applies include, but are not limited to, any issues which might arise with respect to:

a. Separations from work;

b. Refusals of referrals to or offers of work; and

c. Ability to work and availability and active search for work.

SESAs should especially note that this rule applies only to events occurring after an individual has exhausted entitlement to FSC and prior to the week beginning on or after January 6, 1983. It does not apply to any claims for FSC filed for weeks beginning on and after January 9, 1983.

D. Section D, "Weekly Benefit Amount"

There are no changes to Section D, *Weekly Benefit Amount.*

E. Section E, "Maximum FSC Benefits Payable"

1. Subsection 1, *Accounts*, is amended to read as follows:

1. *Accounts.* The SESA will establish a separate FSC account for each eligible individual. The amount of FSC in the individual's account will be the lesser of:

a. 65 percent of the total entitlement to regular benefits (including dependents' allowances) payable to the individual with respect to the most recent benefit year in which the individual received regular benefits, or

b. The maximum FSC benefits payable in the State.

When the 65 percent of total entitlement is not an even dollar amount, the State may round to the nearest dollar, depending upon State law, regulations, or practice.

The SESA must redetermine any individual's account which was previously determined on the basis of the prior 50 percent rule, using 65 percent of the total entitlement to regular benefits. In no case will this redetermined FSC amount exceed the maximum FSC payable in the State. Each individual affected by the change shall be given a written notice of redetermination.

2. Subsection 2, *"Maximum FSC payable in a State"*, is amended to read as follows:

2. *Maximum FSC Payable in a State*

a. *Eight Weeks.* The base level of FSC payable is up to eight weeks of FSC benefits regardless of the State's extended benefit indicator rate. A State may pay up to a maximum of 10, 12, 14

or 16 weeks, depending on the State's extented benefit indicator rate or EB status, as specified below.

b. *Sixteen Weeks.* States which are in a period of "higher unemployment" will pay up to 16 weeks of FSC benefits. To determine a period of "higher unemployment", the State's extended benefit indicator rate is used. A higher unemployment period begins the third week after the first week the extended benefit indicator rate equals or exceeds 6.0 percent. A higher unemployment period ends the third week after the first week the extended benefit indicator rate drops below 6.0 percent. However, a "higher unemployment period" must last at least four weeks.

c. *Fourteen Weeks.* States which were in an extended benefit period on or after June 1, 1982, but prior to January 6, 1983 will pay up to a maximum of 14 weeks of FSC regardless of the current extended benefit indicator rate, unless the State is in a period of "higher unemployment." During periods of "higher unemployment," the State will pay up to a maximum of 16 weeks of FSC. Once a State is no longer in a period of "higher unemployment," as specified above, it will pay up to a maximum of 14 weeks of FSC.

d. *Twelve Weeks.* States which were not in an extended benefit period at any time between June 1, 1982 and January 6, 1983, but are in a period of "high unemployment", or begin an extended benefit period after January 6, 1983, will pay up to 12 weeks of FSC benefits. A "high unemployment" period begins the third week after the first week the extended benefit indicator rate equals or exceeds 4.5 percent but is less than 6.0 percent. A high unemployment period ends the third week after the first week the extended benefit indicator rate drops below 4.5 percent. However, a "high unemployment" period must last at least 4 weeks, unless a State moves to a period of "higher unemployment." A State may change from a period of "high unemployment" to a period of "higher unemployment" after one week.

e. *Ten Weeks.* States which are not in a period of "high" or "higher" unemployment and were not in an extended benefit period at any time since June 1, 1982 and do not begin an extended benefit period during the life of the FSC program, will pay up to 10 weeks of FSC, if the State is in a period of "intermediate unemployment". An "intermediate unemployment period" begins the third week after the first week the extended benefit indicator rate equals or exceeds 3.5 percent but is less than 4.5 percent. An "intermediate unemployment period" ends the third week after the first week the extended benefit indicator rate drops below 3.5 percent or exceeds 4.5 percent. An "intermediate unemployment period" must last at least 4 weeks, unless the State moves to a period of "high" or "higher" unemployment. A State may move to a period of "high" or "higher" unemployment after one week.

There is no minimum "off" period for States which drop below the 3.5, 4.5, or 6.0 percent trigger rates. For example, a State paying up to 16 weeks of FSC may drop to 12 or 14 weeks (depending on its prior EB status) and the following week, if its extended benefit indicator rate equals or exceeds the 6.0 percent rate, again be in a period of "higher" unemployment during which up to 16 weeks of FSC are payable.

Determinations of the beginning and ending of intermediate, high and higher unemployment periods shall be made by the head of the State agency, according to these instructions and 20 CFR Part 615. Public notice shall be given of any such determination, and each individual affected by the change shall be given a written notice.

Note.—There are no changes to subsection 3, *Computation of FSC payable based on a new benefit year.*

3. Subsection 4, *"Beginning of an Extended Benefit Period After the Effective Date of the Act,"* is amended to read as follows:

4. *Beginning of An Extended Benefit Period.* States may begin an extending benefit period after the effective date of the amendments. The beginning of an extended benefit period may affect the maximum weeks of FSC payable, depending on whether the State was in an extended benefit period after June 1, 1982.

If a State was in an extended benefit period at any time between June 1, 1982, and January 6, 1983, and again begins paying EB after January 6, 1983, the State will continue to pay up to 14 weeks of FSC, unless its extended benefit indicator rate equals or exceeds 6.0 percent. If its extended benefit indicator rate equals or exceeds 6.0 percent, the State will be in a period of "higher unemployment" and will pay up to 16 weeks of FSC. However, if a State was not in an extended benefit period between June 1, 1982 and January 6, 1983, and begins an extended benefit period thereafter, the State will begin paying up to 12 weeks of FSC, unless the State is in a period of "higher unemployment" which will raise the maximum amount of FSC payable to 16 weeks.

When an extended benefit period begins, the SESA must, before paying FSC for a week of unemployment, determine each person's eligibility for extended benefits, according to State law provisions relating to EB. If an individual has entitlement to extended benefits, such individual is not eligible for FSC. Once an individual exhausts any entitlement to extended benefits, the individual may receive the remaining balance in his/her FSC account. A new determination of entitlement to FSC is not made since the individual has the same period of eligibility upon which the FSC entitlement was determined.

4. Subsection 5, *"Interstate Claimants"*, is amended to read as follows:

5. *Interstate Claimants.*

a. *Technical Corrections Act.* The amendment to the FSC Act made by the Technical Corrections Act of 1982 (Pub. L. 97–448) specifies that in determining entitlement to FSC for interstate claims, the claimant will be limited to the lesser of:

i. The maximum payable in the agent State, or

ii. The maximum payable in the liable State.

The amendment is effective retroactively as if this provision was originally included in the Federal Supplemental Compensation Act of 1982 (Pub. L. 97–248). Accordingly, States which have paid FSC above the original minimum duration of 6 weeks at any time since the beginning of FSC program, must redetermine their interstate liable claims according to the above provision.

The redetermination must consider changes in the maximum FSC payable which have occurred in both agent and liable States for weeks beginning on or after September 12, 1982, and prior to weeks beginning on or after January 9, 1983, (the effective date of Pub. L. 97–424). The redetermination shall establish an overpayment for any weeks an individual received in excess of the amount of FSC payable which is the lesser of the maximum payable in the agent or liable States. Such overpayments may be considered for waiver according to the following special guidelines rather than the guidelines for waiver of overpayments set forth in subsection 2 of Section L, *Fraud and Overpayment.*

These guidelines pertain only to overpayments established for weeks beginning on or after September 12, 1982, and prior to weeks beginning on or after January 9, 1983, as a result of redeterminations reducing the maximum FSC benefits payable under the interstate benefit payment plan. Due to the retroactive nature of the FSC

interstate provision, all such overpayments may be considered to have been made without fault on the part of the individual, and recovery may be considered to be contrary to equity and good conscience.

Accordingly, unless the SESA has information contrary to the above, it may waive any overpayment created by such redetermination.

For FSC claims filed for any weeks beginning on or after January 9, 1983, the liable State must insure the claimant is limited to the lesser of the maximum FSC payable in the agent or liable State.

Should an SESA determine recoupment of such overpayments is *not* waived, the SESA shall follow the procedures for recovery of overpayments outlined in subsection 2 of Section L *Fraud and Overpayment*. In cases where recoupment of the overpayment is waived, the SESA shall determine the new maximum FSC payable based on the amount the individual properly received from his/her FSC account. For example, an individual received ten weeks of FSC. The claimant was overpaid four weeks since he/she was filing from an agent State that paid a maximum of six weeks of FSC. Recoupment of the four-week overpayment was waived and the claimant was properly paid six weeks of FSC. Thus, in determining the new maximum FSC payable under Pub. L. 97–424, the SESA shall base its calculation on the six weeks which were properly paid and the claimant will be entitled to additional weeks of FSC (for weeks beginning after January 6, 1983) based on the new maximum payable in the agent or liable State, whichever is less.

Liable States must continue to closely monitor their interstate claims for potential changes in FSC entitlement. If maximum weeks of FSC payable in either the agent or liable State changes or if any extended benefit period begins in the agent or liable State, an interstate claimant's entitlement to FSC will change. Interstate claimant's filing from Canada will be entitled to the FSC maximum in effect in the liable State.

b. *EB Limitations*. The extended benefit provisions apply to claims for and payment of FSC. The EB provisions limit interstate claimants to two weeks of extended benefits if they file claims in an agent State not in an extended benefit period. The two-week limitation applies only to claimants filing for FSC under the Interstate Benefit Payment Plan in agent States that have not entered into or have discontinued an agreement to administer the FSC program. Payment of FSC to individuals filing from such agent States is limited to two weeks regardless of whether or not the agent State is in an Extended Benefit period. The two-week limitation is applied because the agent State is not in an FSC period.

5. Subsection 6, *"Changes in Account"*, is amended to read as follows:

6. *Changes in Account*. The FSC amendments increase the maximum FSC payable in all States. Depending on economic conditions in a State (as defined by the amendments), an additional 2 or up to a possible 10 weeks of FSC benefits are payable. The increase applies to FSC payable for weeks beginning on or after January 9, 1983, and applies to all eligible individuals, including those who have previously exhausted entitlement to FSC. The SESA should make the appropriate change in any individual's FSC account who is entitled to more FSC as a result of the increase in the maximum FSC payable.

The FSC maximum in a State may also change with economic changes. When a State's FSC maximum goes up (for example, from 12 to 16 weeks), the maximum payable to all FSC recipients is increased. An individual who previously exhausted FSC is now eligible for the additional weeks of FSC as long as the new maximum does not exceed 65 percent of the individual's regular benefits. Such changes may occur even though many weeks have elapsed since the individual exhusted initial FSC entitlement.

When a State FSC maximum is reduced, e.g., from 16 to 12, the reduced maximum applies to all individuals claiming FSC after the date of the change. Individuals who have exhausted the new maximum are ineligible for further FSC, even though they had not exhausted old maximum.

If the individual is entitled to more or less FSC as a result of a change in the maximum weeks of FSC payable in the State, the appropriate change should be made in the individual's FSC account.

If it is later determined as the result of a redetermination or appeal that an individual was entitled to more or less regular or extended benefits under the State law or under 5 U.S.C. Chapter 85, the individual's status as an exhaustee should be redetermined as of the new date of the individual's exhaustion, and an appropriate change shall be made in the individual's FSC account.

F. Other Changes

Sections F through L of Part II of GAL 2–83 are not affected by the amendments and are unchanged. Part III, *Job Placement and Work Test Activities*, is also not affected by the amendments.

[FR Doc. 83-5869 Filed 3-7-83; 8:45 am]
BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Alaska State Standards; Approval

1. *Background*. Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On August 10, 1973, notice was published in the **Federal Register** (38 FR 21628) of the approval of the Alaska plan and the adoption of Subpart R to Part 1952 containing the decision.

The Alaska plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1952.243 of Subpart R sets forth the State's schedule for the adoption of at least as effective State standards. In response to Federal standards changes, the State has submitted by letter dated April 19, 1982 from Edmund N. Orbeck, Commissioner, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standards comparable to 29 CFR 1910.20, Access to Employee Exposure and Medical Records, as originally published in the **Federal Register** (45 FR 35277) on May 23, 1980.

This State standard, which is contained in Subchapter 4, Alaska Occupational Safety and Health Code, was promulgated after public notice under authority vested by AS 18.60.020 and after compliance with the Administrative Procedure Act (AS 44.62) specifically including the notice under AS 44.62.210 to Edmund Orbeck, Commissioner, and became effective February 6, 1982.

2. *Decision*. Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are at least as effective as the Federal standards and accordingly are approved. The major differences are changes in text that do not diminish

from the State standard when compared to the text in the Federal standard.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska 99811; and the Office of State Programs, Room N-3613, 200 Constitution Avenue NW., Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(e) the Assistant Secretary may prescribe alternate procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Alaska plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards were adopted in accordance with the procedural requirements of State law which included public comment and further public participation would be repetitious.

This decision is effective March 8, 1983.

(Sec. 18, Pub.L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Seattle, Washington this 7th day of September 1982.

Frank L. Strasheim,

Acting Regional Administrator.

[FR Doc. 83-5871 Filed 3-7-83; 8:45 am]

BILLING CODE 45-10-28-M

Office of the Secretary

Agency Forms Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new forms, revisions, extensions (burden change), extensions (no change), or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information: The Agency of the Department issuing this form; the title of the form; the Agency form number, if applicable; how often the form must be filled out; who will be required to or asked to report; whether small business or organizations are affected; the standard industrial classification (SIC) codes, referring to specific respondent groups that are affected; an estimate of the number of responses; an estimate of the total number of hours needed to fill out the form; the number of forms in the request for approval; and an abstract describing the need for and uses of the information collection.

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room S-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

(Not previously approved or expired more than 6 months ago)

• Employment Standards Administration
Housing Terms and Conditions
WH-521
Annually
Individuals or households; farms; businesses or other institutions
Small business or organizations
SIC: 013, 016, 017, 018, 019
842 responses; 842 hours; 1 form

Section 201(c) of the Migrant and Seasonal Agricultural Workers Protection Act requires any farm labor contractor, agricultural employee or agricultural association providing housing, to post or present, by written statement, to each worker, the terms and conditions of occupany.

• Employment Standards Administration
Worker Information
WH-516
Annually
Individuals or households; farms, businesses or other institutions
Small business or organizations
SIC: 013, 016, 017, 018, 019
36,000 responses; 18,000 hours; 1 form

Section 201(b) of the Migrant and Seasonal Agricultural Workers Protection Act requires each farm labor contractor, agricultural employer or agricultural association to post at the place of employment a poster setting forth the rights and protections afforded the workers by this act.

Revision

• Employment Standards Administration
Application for a Farm Labor Contractor Certificate of Registration
WH-510 (formerly WH-410)
Annually
Individuals or households; farms; businesses or other institutions
Small business or organization
SIC: 013, 016, 017, 018, 019
7,000 responses; 3,500 hours; 1 form

Section 101 of the Migrant and Seasonal Agricultural Workers Protection Act provides that no person shall engage in any farm labor contracting activity unless such person has a certificate of registration from the Secretary specifying the contracting activities which have been authorized.

• Employment Standards Administration
Application for Farm Labor Contractor Employee Certificate of Registration
WH-512 (formerly WH-412)
Annually
Individuals or households; farms; businesses or other institutions
Small business or organization
SIC: 013, 016, 017, 018, 019
5,000 responses; 2,500 hours, 1 form

Section 101 of the Migrant and Seasonal Agricultural Workers Protection Act provides that no person shall engage in any farm labor contracting activity unless such person has a certificate of registration from the Secretary specifying the contracting activities which have been authorized.

• Employment Standards Administration
Vehicle Mechanical Inspection Report for Transportation Subject to

Department of Transportation Requirements
WH–514 and WH–514a (formerly WH–414)
Annually
Individual or households; businesses or other institutions
Small business or organizations
SIC: 013, 016, 017, 018, 019
3,600 responses; 900 hours; 2 forms

Section 401 of the Migrant and Seasonal Agricultural Workers Protection Act requires any farm labor contractor who intends to transport workers to submit a statement identifying each vehicle to be used and proof that such vehicle conforms to Federal and State safety and health requirements. Forms WH–514 and WH–514a meet this criteria.

Reinstatement

• Marine Safety and Health Administation
Impoundment or Refuse Pile Engineering
MSHA 216 and 217
Annually
Businesses or other institutions; small business or organization
90 responses; 78,150 hours

Requires coal mine operators to submit engineering plans concerning impoundments and refuse pile construction prior to beginning any work. Also requires that revisions to existing plans be submitted for approval.

Reinstatement

• Mine Safety and Health Administration
Annual Status Report and Certification on Impoundments
MSHA 211
Annually
Businesses or other institutions; small business or organization
SIC: 111 and 121
600 responses; 1,200 hours

Requires each operator to submit an annual status report and certification of impoundments and refuse piles. The information is used as an enforcement and administrative tool.

Signed at Washington, D.C. this 3rd day of March 1983.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 83-5872 Filed 3-7-83; 8:45 am]

BILLING CODE 4510-27-M, 4510-43-M

Secretary's Committee on Veterans' Employment; Establishment

In accordance with the provisions of the Federal Advisory Committee Act and Office of Management and Budget Circular A–63 of March 1974, I have determined that the establishment of the Secretary's Committee on Veterans' Employment is in the public interest in connection with the performance of duties imposed on the Department of Labor, by Section 308, Title III, Pub. L. 97–306, "Veterans Compensation, Education and Employment Amendments of 1982."

The Committee will advise the Secretary of Labor on such matters as problems and issues relating to veterans' employment and reemployment.

Under Section 308, Title III of the Act the Secretary is charged with the responsibility of acting as Chairman of the Committee with the Assistant Secretary of Labor for Veterans' Employment serving as Vice Chairman. The Committee will have a total of 13 members including representatives of: the Administrator of the Veterans Administration; Secretary of Defense; Secretary of Health and Human Services; Director of the Office of Personnel Management; Chairman of the Equal Employment Opportunity Commission; Administrator of the Small Business Administration; and a representative of each of the chartered veterans' organizations having a national employment program.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act.

Interested persons are invited to submit comments regarding the establishment of the Secretary's Committee on Veterans' Employment. Such comments should be addressed to Mr. Vincent B. Pagano, 200 Constitution Avenue NW., Room S1315–FPB, Washington, D.C. 20210.

Signed at Washington, D.C., this 31st day of January, 1983.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 83-5867 Filed 3-7-83; 8:45 am]

BILLING CODE 4510-23-M

Secretary of Labor's Committee on Veterans' Employment; Meeting

The Secretary's Committee on Veterans' Employment was established under Section 308, Title III, Pub. L. 97–306, "Veterans Compensation, Education and Employment Amendments of 1982," to bring to the attention of the Secretary problems and issues relating to veterans' employment.

Notice is hereby given that the Secretary of Labor's Committee on Veterans' Employment will meet on Thursday, March 24, 1983, at 10:00 A.M., in the Secretary's Conference Room, S2508–FPB.

Items to be discussed are:

• Reorganization of the Office of the Assistant Secretary for Veterans' Employment.
• Reports of Committee Participants.
• Job Training Partnership Act—Title IV, Part C—Veterans Employment Programs.
• Wagner-Peyser Act Provisions.
• Review of Disabled Veterans Outreach Program.

The public is invited to attend.

For additional information contact: Mr. Vincent B. Pagano, 200 Constitution Avenue NW., Room S1315–FPB, Washington, D.C. 20210, (202) 523–9116.

Official records of the meeting will be available for public inspection in Room S1315–FPB, 200 Constitution Avenue NW., Washington, D.C. 20210.

Dated: February 1, 1983.

William C. Plowden, Jr.,

Assistant Secretary for Veterans' Employment.

[FR Doc. 83-5868 Filed 3-7-83; 8:45 am]

BILLING CODE 4510-23-M

SECURITIES AND EXCHANGE COMMISSION

[File Nos. 22–12201, 22–12208]

Fedders Corp.; Application and Opportunity for Hearing

March 2, 1983.

Notice is hereby given that Fedders Corporation (the "Company") has filed an application pursuant to clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Commission that trusteeship of Bradford Trust Company ("Bradford") under Indentures to be dated as of January 1, 1983 (the "New Indentures"), which will be qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bradford from acting under the New Indentures. The Debentures to be issued pursuant to the New Indentures are to be equally and ratably partially secured by a mortgage on the Company's Buffalo, New York property.

The present application, filed pursuant to clause (ii) of Section 310(b)(1) of the Act, seeks to exclude the New Indentures from the operation of Section 310(b)(1) of the Act.

The effect of the proviso contained in clause (ii) of Section 310(b)(1) of the Act on the matter of the present application is such that the New Indentures may be excluded from the operation of Section 310(b)(1) of the Act if the Company shall

have sustained the burden of proving, by this application to the Commission and after opportunity for hearing thereon, that the trusteeship of Bradford under the New Indentures is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bradford from acting as trustee under each of the New Indentures.

The Company alleges that:

(1) The Company proposes to issue $600 principal amount of its 11¾% Senior Subordinated Debentures due 1195 ("11¾% Debentures") in exchange for each $1,000 principal amount of its 5% Convertible Subordinated Debentures due 1996 and $800 principal amount of its 14¾% Senior Subordinated Debentures due 1993 ("14¾% Debentures") in exchange for each $1,000 principal amount of its 8¾% Subordinated Debentures due 1994. The 11¾% Debentures and the 14¾% Debentures will be partially secured on an equal and ratable basis by a $1,250,000 mortgage on the Company's Buffalo, New York property which has an appraisal value of only approximately $1,250,000. The maximum amount of 11¾% Debentures to be issued is $17,985,600, while the maximum amount of 14¾% Debentures to be issued is $14,973,600. The respective interests of the Trustee representing each class of Debentures is to be based pro rata on the outstanding principal amount of the respective Debentures.

(2) Such differences as will exist between each of the New Indentures are not likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bradford from acting as trustee under any of the New Indentures.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Securities and Exchange Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the offices of the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549.

Notice is further given that an order granting the application may be issued by the Commission at any time on or after March 25, 1983, unless prior thereto a hearing upon the application is ordered by the Commission, as provided in clause (ii) of Section 310(b)(1) of the Trust Indenture Act of 1939. Any interested person may, no later than March 25, 1983, at 5:30 p.m., Eastern Daylight Time, in writing submit to the Commission, his views or any additional facts bearing upon this application or the desirability of a hearing thereon. Any such communication or request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549, and should state briefly the nature of the interest of the person submitting such information or requesting a hearing, the reasons for such request, and the issues of fact and law raised by the application which he desires to controvert.

By the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-5687 Filed 3-7-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13057 (812-5417)]

First Midwest Capital Corp.; Filing of application

March 1, 1983.

Notice is hereby given that First Midwest Capital Corporation ("Applicant"), Suite 700, Chamber of Commerce Building, 15 South Fifth Street, Minneapolis, Minnesota 55402, a non-diversified, closed-end, management investment company registered under the Investment Company Act of 1940 ("Act") and a federal licensee under the Small Business Investment Act of 1958, filed an application on January 3, 1983, and an amendment thereto on February 7, 1983, pursuant to Section 17(d) of the act and Rule 17d-1 thereunder, for an order of the Commission permitting the participation of Applicant in additional financing of BetaCom Corporation ("BetaCom"). Applicant is a wholly-owned subsidiary of First Midwest corporation, also a non-diversified, closed-end, management investment company registered under the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the complete text of pertinent provisions of the Act.

Applicant states that it is engaged in the business of providing long-term equity funding to eligible small businesses to assist them in their growth and development. According to the application, on January 26, 1981, the Applicant and another small business investment company ("Control Data Capital Corp.") provided debt and equity financing to BetaCom in the sum of $600,000. BetaCom is engaged in the manufacturing of terminal interface processor. Applicant's participation therein consisted of purchasing $125,000 of eight-year debentures bearing interest at the rate of 15 percent per annum, and 260 shares of common stock for $125,000. The common stock purchased by Applicant represented the power to vote 14.57 percent of the voting shares of BetaCom. As a result of such ownership, Applicant and Control Data Capital Corp. became affiliated persons, as defined by Section 2(a)(3) of the Act, of an affiliated person (BetaCom) of Applicant, Control Data Capital Corp. having purchased greater than five percent of the voting shares of BetaCom.

It is stated in the application that, subsequent to the above-described transaction, on March 24, 1982, additional financing totalling $850,000 was provided by a group of small business investment companies ("SBICs") to BetaCom. The financing took the form of $424,920 of eight-year 14 percent per annum debentures and common stock purchased at a total price of $425,080. Applicant's participation consisted of purchasing $37,440 of the debentures plus $37,560 worth of the common stock, as a result of the second financing, Applicant's ownership of BetaCom declined to 12.46 percent, and MorAmerica, a participating SBIC, became an affiliated person of BetaCom by virtue of its acquiring more than five percent of the voting shares thereof.

Applicant proposes now to provide an additional investment of $75,000, which would bring its total investment in BetaCom to $400,000, or $75,000 greater than 20 percent of its paid-in capital and surplus. Applicant represents that the investment by Applicant will be a part of a total investment of $280,000 to be provided by the previous investors, including MorAmerica and Control Data Capital Corp., on a pro rata basis. The investment will take the form of one-year promissory notes bearing interest at the rate of 12 percent per annum. It is anticipated, Applicant states, that this short-term financing will eventually be rolled over into permanent financing of $1.8 million through the sale of convertible stock by BetaCom, which will have identical conversion privileges for all holders of convertible stock.

Section 17(d) of the Act and Rule 17d-1 thereunder, taken together, provide, in pertinent part, that it is unlawful for an

affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, to effect any transaction in which such registered company is a joint or a joint and several participants with such person unless an application regarding such joint enterprise has been filed with the Commission and permission to effect such transaction has been granted.

Applicant states that it believes Rule 17d–1(d)(5) would exempt the proposed transaction from the restrictions of Rule 17d–1 except for the fact that Applicant proposes to commit in excess of 20 percent of its paid-in capital and surplus to investments in BetaCom. Applicant represents that it has received permission from the Small Business Administration to exceed its investment limit. According to the application, the proposed transaction consists of the sale to First Midwest of $75,000 of one-year promissory notes bearing interest at the rate of 12 percent per annum.

Applicant states that it will be participating in the proposed transaction on a basis which is no less advantageous than that of any other participant. The Applicant further asserts that the proposed transaction is fair to all parties and that Applicant believes the investment has a potential for substantial return. The Applicant also contends that the proposed transaction is consistent with the general purposes and policies of the Act and, therefore, requests, pursuant to Section 17(d) of the Act and Rule 17d–1 thereunder, an order of the Commission permitting the proposed transaction.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 28, 1983, at 5:30 p.m. do so by submitting a written request setting forth the nature of his/her interest, the reasons for his/her request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83–5884 Filed 3–7–83; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 13056 (812–5416)]

Midland Bank Canada; Filing of Application

March 1, 1983.

Notice is hereby given that Midland Bank Canada ("Applicant"), c/o Peter V. Darrow, Esq., Shearman & Sterling, 53 Wall Street, New York, NY 10005, filed an application on January 3, 1983, and an amendment thereto on January 28, 1983, requesting an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") exempting it from all provisions of the Act in connection with its proposed sale in the United States of short-term commercial paper notes ("Notes") and other debt securities whose payment would be unconditionally guaranteed by Midland Bank plc ("Midland"), Applicant's parent corporation. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that in July 1975, Midland incorporated Midland Financial Services Limited ("Midland Financial"), a wholly-owned subsidiary, in Ontario, Canada. In 1981, following the enactment of the Bank Act of Canada (the "Bank Act") in November 1980, Midland Financial applied for a bank license, which was granted on October 8, 1981, and changed its name to Midland Bank Canada.

On February 16, 1982, the Commisison issued an order pursuant to Section 6(c) of the Act exemptiong Midland from all provisions of the Act (Investment Company Act Release No. 12229). Information with respect to Midland, including a description of its business and English and United States banking regulations to which Midland is subject, is included in Midland's application requesting that order (File No. 812–4997).

Applicant states that it is currently represented in four major Canadian cities, Toronto, Calgary, Edmonton and Vancouver, with a total staff of 42. Its lending operations include lease financing, syndicated loans, operating lines, construction and development loans, trade and project finance. It actively seeks deposits, but also relies heavily on the Canadian and international money markets for funding.

Applicant's operating income is derived principally from interest on loans, leases, securities and inter-bank placings. For the financial year ended October 31, 1982, 99% of Applicant's total operating income was derived from those sources. At October 31, 1982, Applicant states that 96.8% of its total assets consisted of loans, leases, securities and inter-bank placings, and 96.3% of its total liabilities consisted of deposits.

Applicant represents that it is subject to extensive regulation pursuant to the Bank Act, which is subject to decennial review. The current Bank Act, as recently amended, came into force on December 1, 1980. It contains provisions pertaining to the business of banking and the organization of banks in Canada, including the business and powers of charactered banks, their shareholders and directors, their capital stock and debentures, the maintenance of reserves, auditing requirements, financial disclosure and regular inspection by the Inspector General of Banks. Accordingly, Applicant states that it is subject to regulation comparable in many respects to the regulation of United States banks.

Applicant states that the Notes will be in denominations of $100,000, or more, will mature not more than nine months from the date of issuance and will not be payable on demand or include any provision for extension, renewal or automatic "roll-over" at the option of either the holders or Applicant. Applicant states that the presently proposed issue of Notes and any future issue of debt securities offered for sale in the United States by Applicant will be conditioned upon the receipt, prior to issuance, of one of the three highest investment grade ratings from at least one of the nationally recognized statistical rating organizations. United States counsel to Applicant will have certified that such a rating has been received. The proceeds of the Notes will be used for "current transactions" within the meaning of Section 3(a)(3) of the Securities Act of 1933.

Applicant will sell the Notes to one or more United States securities dealers, who will reoffer the Notes as principal to institutional investors and other entities and individuals in the United States who normally purchase commercial paper. The Notes will not be advertised or otherwise offered for sale to the general public. The aggregate principal amount of the Notes to be outstanding at any time is not currently

expected to exceed $200,000,000. Applicant represents that the purpose in making the proposed offering of the Notes is to provide an additional source of supply of United States dollars to supplement dollars currently obtained in the Eurodollar market. Applicant agrees to secure an undertaking from United States securities dealer to whom Notes are sold that each offeree who has indicated an interest in the Notes, prior to any sale of Notes to such offeree, will be provided by the dealer with a memorandum that describes the business of Applicant and contains Applicant's most recent publicly available annual financial statements (including a balance sheet, profit and loss account, statement of source and application of funds and notes thereto) audited in accordance with Canadian accounting principles, and the most recently publicly available unaudited interim statement for Applicant. If the Notes are sold by Applicant directly, Applicant will provide such a memorandum to each offeree who has indicated an interest in the Notes, prior to any sale of Notes to that offeree. The memorandum will describe the material differences between Canadian accounting principles applicable to Canadian banks and "generally accepted accounting principles" applicable to United States commercial banks. The memorandum will be at least as comprehensive as those customarily used in offering commercial paper in the United States and will be updated periodically to reflect material changes in Applicant's business and financial condition.

The application states that the Notes will rank *pari passu* among themselves and equally with all other unsecured and unsubordinated indebtedness of Applicant, including deposit liabilities (except for indebtedness of Applicant which is given a statutory preference under the Bank Act or other statute), and ahead of its share capital. Midland's quarantees will rank *pari passu* with all other unsecured and unsubordinated indebtedness of Midland (including deposit liabilities but excluding certain statutorily preferred liquidation claims for national or local taxation and for compensation of employees), and ahead of its share capital.

The application states that Applicant will appoint an issuing agent to issue the Notes from time to time. In addition, Applicant and Midland will appoint an agent to accept any process which may be served in any action based on the Notes or the Guarantees and instituted in any state or federal court by the holder of any Notes.

The application further states that Applicant and Midland will expressly accept the jurisdiction of any state or federal court in the Borough of Manhattan in the City and State of New York in respect of any action based on the Notes or arising out of the offering and sale of the Notes, or any action based on or arising out of the guarantees instituted by the holder of any Notes. This appointment of an authorized agent to accept service of process and the consent to jurisdiction will be irrevocable until all amounts due and to become due on the Notes or the guarantees have been paid. The application also states that Applicant will consent to jurisdiction and will appoint an agent for service of process in suits arising from any future offerings of debt securities in the United States.

The application states that Applicant may offer other securities for sale in the United States, including long-term debt securities, which may be unconditionally guaranteed by Midland. The Applicant further states that any future offering of securities in the United States will be made only pursuant to a registration statement under the Securities Act or pursuant to an applicable exemption from rgistration under the Securities Act, and any such offering will be done on the basis of disclosure documents at least as comprehensive in their description of Applicant and its business and financial statements as the disclosure memorandum referred to in the application, but in no event will such future disclosure documents be less comprehensive than is customary for United States offerings of similar debt securities. The application states that Applicant will promptly update any such documents to reflect material changes in its financial condition, and that Applicant will provide offerees of its securities with such disclosure documents prior to the sale of such securities to offerees.

Section 6(c) of the Act provides, in pertinent part, that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant states that, among other things, compliance by it with a number of substantive provisions of the Act would, as a practical matter, conflict with its operation as a bank and that it would thus be effectively precluded from selling securities in the United States if it were required to register as an investment company and comply with such provisions of the Act. Applicant further submits that an exemptive order pursuant to Section 6(c) of the Act would benefit institutional and other sophisticated investors in the United States because they would otherwise be precluded from purchasing commerical paper notes issued by Applicant. Moreover, the application contends that because of the development of the large Eurodollar market, the major foreign banks which deal in the market need a source of United States dollars in case of a disuption of the market. As a closely regulated Canadian banking entity, Applicant also states that it is different from the type of institution that Congress intended the Act to regulate. It is asserted that the particular abuses against which the Act is directed are not present in Applicant's case.

Applicant concludes that granting an exemptive order pursuant to Section 6(c) of the Act would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant also represents that the granting of the requested order will not give it an advantage over domestic banks in the issuance of debt securities in the manner described in the application.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 28, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-5995 Filed 3-7-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19558; (SR-NYSE-83-1)]

New York Stock Exchange, Inc.; Order Approving Proposed Rule Change

March 1, 1983.

The New York Stock Exchange, Inc. ("NYSE"), 11 Wall Street, New York, NY 10005, submitted on January 7, 1983, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder, to raise the standard for minimum acceptable specialist performance under NYSE Rule 103A from 3.00 to 4.50.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 19436, January 24, 1983) and by publication in the **Federal Register** (48 FR 3063, January 24; and 48 FR 3437, January 25, 1983).[1] No comments were received with respect to the proposed rule change.

The 4.50 Performance Standard

NYSE Rule 103A establishes minimum standards of acceptable performance for NYSE specialist units and provides a non-disciplinary procedure for the reallocation of one or more securities assigned to a specialist unit that has fallen below these minimum standards.[1] The minimum standards are based upon the results of the quarterly Specialist Performance Evaluation Questionnaire ("SPEQ").[3] Floor brokers currently grade specialist performance in the areas covered by the five SPEQ questions on a scale of 1 (lowest) to 7 (highest). The current standard for minimum acceptable performance under Rule 103A is 3.00,[4] a standard that was implemented by the NYSE in connection with its former 1–5 point SPEQ grading scale. The Exchange's adoption of the current 1–7 point grading scale in March 1982 necessitated that the numerical standard for minimum acceptable performance be increased.[5]

During the first three quarters of 1982, the period for which SPEQ results are available under the 1–7 grading scale, the average overall score for all NYSE specialist units has been well above 5.00, only one individual unit has received an overall grade below 4.50 for even one quarter since the adoption of the seven point scale, and just 10 units received scores below 4.50 on individual SPEQ questions a total of 14 times. Thus, had the 4.50 standard been in effect since the first quarter of 1982, no unit would have fallen below the 4.50 level a sufficient number of quarters to invoke the Rule 103A reallocation procedures.

The Exchange in its filing indicates that the increase in the Rule 103A standard is an interim measure designed to make the adjustments to the standard necessitated by the Exchanges adoption of a 1–7 point scale while reserving further revision until completion of the major study of the specialist system the Exchange has recently undertaken.

Discussion and Findings

The Commission agrees with the Exchange that adoption of the proposed 4.50 standard under Rule 103A is an adequate *interim* measure. This change has the effect of rasing the standard to the mathematical equivalent of a 3.21 on a 5-point rating scale.[6] In addition, 4.50 is above the level disignated on the SPEQ 1–7 point scale as the level indicating that the specialist "meets its requirements".[7]

The Commission, however, is not reaching any determination regarding the adequacy of a 4.50 standard as part of a permenent reallocation program. Based on the data reviewed above, the Commission is concerned that like its 3.00 predecessor, the revised standard may render Rule 103A at best a limited deterrent to substandard specialist performance.

Accordingly, the Commission believes it is appropriate for the Exchange to implement the 4.50 standard pending completion of the Exchange's review of this standard as part of its study of the specialist system. The Commission has previously indicated that completion of that study in time to permit the Exchange to submit the necessary changes to the Exchange's reallocation procedures to the Commission for its consideration prior to June 30, 1983 may be necessary in order for the Commission to grant any extension of Rule 103A and its related procedures.[8] If, by June 30, 1983, it appears that the 4.50 standard appears inadequate as a measure of satisfactory specialist performance (*i.e.*, if overall specialist SPEQ scores remain uniformly higher than 4.50), the Commission may view an upward revision in the 4.50 standard as necessary before considering further temporary extensions to or permanent approval of the pilot program, regardless of whether the exchange has completed its study of the specialist system.

The Commission finds, therefore, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change referenced above be, and hereby is approved.

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[1] The proposed rule change included a proposal to extend the effectiveness of NYSE's Rule 103A through June 30, 1983; this portion of the proposed rule change was granted accelerated approval for good cause under Section 19(b)(2) of the Act; Securities Exchange Act Release No. 19436, January 17, 1983; 48 FR 3063, January 24, 1983) (the "January Release"). The "proposed rule change" as used hereafter in this order refers only to that portion of File No. SR-NYSE-83-1 proposing to change the Rule 103A standard for minimum levels of acceptable performance.

[2] For a more complete description of the Exchange's reallocation procedures under Rule 103A, see the January Release.

[3] For a more detailed discussion of NYSE's SPEQ, see the January Release and File No. SR-NYSE-83-7, which contains the Exchange's proposed rule change respecting the 1982 revisions to its SPEQ (Securities Exchange Act Release No. 19532, February 23, 1983).

[4] More specifically, Rule 103A states that a specialist unit's performance shall be considered below acceptable levels if it receives (1) an overall SPEQ grade (*i.e.*, the unit's grade on all 5 questions) below 3.00 for two or more quarters; or (2) average quarterly grades below 3.00 for three or more individual questions for two or more quarters; or (3) average quarterly grades below 3.00 for the same individual question for four or more consecutive quarters. These are the standards for triggering Rule 103A reallocation procedures. In addition, as described in NYSE's filing and in the January Release, performance below the Rule 103A standard for any one quarter will result in performance improvement action, which consists chiefly of counselling by the Exchange staff.

[5] Even before the adoption of the 1–7 point grading scale, the Commission expressed dissatisfaction with the 3.00 standard and has noted that, since the commencement of the Rule 103A pilot program in 1979, only one specialist unit has demonstrated unacceptable performance under the standards of Rule 103A, and no reallocation proceeding has ever been held under the rule.

[6] The Commission notes, however, that even a 3.21 standard on the old 5-point scale may not have been adequate. The Commission expressed concerns that grade inflation in brokers' SPEQ responses may have eviscerated the old 3.00 standard, and recommended adoption of a relative-ranking based standard. *See*, letter from Douglas Scarff, Director, Division of Market Regulation, to John Phelan, President, NYSE, dated November 10, 1981.

[7] Under the current SPEQ, a grade of 4.0 on an individual question indicates that a unit meets its requirements.

[8] *See* the January Release. As indicated above, Rule 103A is scheduled to terminate on June 30, 1983. *See*, note 1, *supra*.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-5892 Filed 3-7-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19554; File No. SR-PSE-83-5]

Pacific Stock Exchange, Inc.; Filing of Proposed Rule Change

March 1, 1983.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 15, 1983, the Pacific Stock Exchange filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The Pacific Stock Exchange, Inc. ("PSE") proposes to adopt a new Equity Floor Procedure Advice 2-B, Dissemination of Quotations in Local Issues (the "Advice"). The proposed new Advice requires specialists to disseminate quotations in their assigned local issues prior to 7:30 a.m., Pacific Time. The Exchange's quotation system does not allow quotations to be entered prior to 7:00 a.m., Pacific Time. In addition, the proposed Advice authorizes the Joint Equity Floor Trading Committee to fine specialists for repeated violations of the requirement and sets forth guidelines for penalties to be imposed, based upon the number of violations for a particular local security. The PSE states that the statutory basis for the proposed rule change is Section 6(b)(5) of the Act in that it will facilitate transactions in securities traded on the PSE, and Section 6(b)(6) of the Act in that it provides a fine schedule for repeated violations of Exchange policy.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the Federal Register. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File No. SR-PSE-83-5.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-5888 Filed 3-7-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19555; (SR-PSE-82-15)]

Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

March 1, 1983.

The Pacific Stock Exchange, Inc. ("PSE"), 618 South Spring Street, Los Angeles, CA, submitted on December 22, 1982, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder to adopt certain amendments to PSE's pilot program for the appointment and evaluation of specialists and the creation of new specialist posts (the "program"), and to extend the program, as amended, to December 31, 1983.[1] The proposed rule change would amend PSE Rule II, Section 1, to codify the existing rules and procedures for the appointment and registration of new specialists and the creation of new specialist posts. In addition, the proposed rule change would modify the various methods used to measure specialist performance, and add new PSE Rule II, Section 11, to provide specific standards for determining when a specialist's performance is considered below acceptable performance levels and authorize the cancellation of a specialist's registration in selected stocks when his performance has been found to be substandard.[2]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release (Securities Exchange Act Release No. 19385, December 30, 1982) and by publication in the Federal Register (48 FR 918, January 7, 1983 and 48 FR 1256, January 11, 1983). The Exchange received one comment letter concerning the proposed rule change. The commentator, a PSE specialist firm, suggested that the PSE should (1) address the rights as to notification and hearing procedures pertaining to the specialist firm; and (2) make available to the specialist and his firm scores of other specialist units on the specialist's floor so as to enable the specialist and his firm to compare the specialist's performance to the other specialists on his floor.[3] The Exchange responded by indicating that it will (1) notify the firm in advance of any proceedings against one of the firm's specialists under the proposed rules; (2) allow the firm to participate in such proceedings in order to help explain the specialist's performance; and (3) send the firm the scores of all specialists on the appropriate floor of the Exchange so that the firm may compare its specialist's performance to that of other specialist on his floor.[4]

The Commission finds that the proposed rule change is consistent with the requirments of the Act and the rules and regulations thereunder applicable to national securities exchange.[5] In

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[1] The Commission approved the program on a one-year pilot basis on May 27, 1981. Securities Exchange Act Release No. 17818, May 27, 1981; 46 FR 30016, June 4, 1981. The program has been extended several times since the end of the initial one-year pilot period; most recently, on December 30, 1983, the Commission granted temporary approval of the instant rule change, making the program effective, as amended, from January 1, 1983 through March 31, 1983. Securities Exchange Act Release No. 19385, December 30, 1982; 48 FR 1256, January 12, 1982.

[2] In its filing, PSE states that the purpose of the program is to improve the quality of the PSE marketplace through non-disciplinary procedures. In addition, the Exchange states in its filing that the proposed new rules will neither replace nor impair the PSE's authority to cancel a specialist's registration or impose other sanctions through disciplinary proceedings for violations of Exchange rules. The Commission believes that the Exchange's designation of proposed Rule II, Section 11 as non-disciplinary is appropriate. See Securities Exchange Act Release No. 15827, May 15, 1979; 44 FR 29778, May 22, 1979 (Order approving NYSE Rule 103A); and Securities Exchange Act Release No. 18975, August 15, 1982; 47 FR 37019, August 24, 1982 (Order approving Phlx Rules 501-506).

[3] *See* letter from Thomas R. Gaian, Senior Vice President, Wedbush Noble, Cooke Inc., to Jerry M. Gluck, Vice President, PSE, dated January 21, 1983.

[4] *See* letter from Jerry Gluck, Vice President, PSE to Thomas Gaian, Wedbush, Noble, Cooke, Inc., dated February 9, 1983. The Exchange has indicated that the scores sent to the firm will not indicate the identity of the specialists receiving those scores except, of course, for the firm's own specialist(s).

[5] The Commission finds that the Exchange's response to the specialist firm's comments described above, *see* note 4, *supra*, contains the commitments necessary to address adequately that commentator's concern.

particular, the Commission finds that the proposed rule change is designed to improve specialist performance, thereby fostering cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, protecting investors and the public interest in a manner consistent with Section 6 of the Act. In this regard, the amendements to the program and its extension for one year [6] will continue in place and strengthen the Exchange's system for the evaluation of specialist performance, and, in addition give the Exchange an adequate basis for reallocating stocks in instances of unacceptable specialist performance so as to improve market making capabilities with respect to such stocks. The one-year extension of the revised program should provided the Exchange, the Commission and the public an opportunity to evaluate the actual operation of the revised program in light of these objectives.

In addition, the Commission finds that the proposed rule change is consistent with Section 11(b) of the Act and the rules and regulations thereunder that permit national securities exchanges to regulate the registration of specialists. Finally, the Commission finds that the proposed rule change, by providing for improved specialist performance, has the potential for increasing competition among PSE specialists and is, therefore, consistent with Section 6(b)(8) of the Act in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-5889 Filed 3-7-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13055; (811-909)]

Revere Fund, Inc., Filing of an Application

March 1, 1938.

Notice is hereby given that Revere Fund, Inc. ("Applicant"), Greenville Center, C-200, 3801 Kennett Pike, Wilmington, DE 19807, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company, filed an application on November 4, 1982, and an amendment thereto on January 3, 1982, for an order pursuant to Section 8(f) of the Act, declaring that it has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the commission for a statement of the representations contained therein, which are summarized below.

Applicant was organized as a Delaware corporation. On November 10, 1959, Applicant registered under the Act and filed a registration statement pursuant to the Securities Act of 1933 with respect to 250,000 shares of its common stock. That registration was declared effective on January 29, 1960, whereupon Applicant commenced the initial offering of its shares.

On June 21, 1982, Applicant's board of directors approved an Agreement and Plan or Reorganization ("Plan") which was further arpproved by Applicant's shareholders on September 30, 1982. Pursuant to the Plan, at the close of business on October 1, 1982, substantially all Applicant's assets were acquired by Sigma Special Fund, Inc. ("Sigma"), a registered open-end investment company under the Act, solely for shares of Sigma on the basis of their respective net asset values. According to the application, the rate of exchange was 0.6633 shares of Sigma for each share of Applicant.

Applicant further states that, in compliance with the provisions of the Internal Revenue Code applicable to regulated investment companies, its board declared a dividend representing all undistributed investment income, aggregating $88,198. Applicant further represents that it has been dissolved pursuant to a Certificate of Dissolution filed with the Secretary of the State of Delaware on October 6, 1982.

Applicant represents that it has no assets, liabilities or securityholders, and that it is not a party to any litigation or administrative proceedings. Applicant further represents that it is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order and upon the effectiveness of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than March 28, 1983, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. Persons who request a hearing will receive any notices and orders issued in this matter. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission by the division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-5893 Filed 3-7-83; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Seiscom Delta, Inc.; Order of Suspension of Trading

March 3, 1983.

It appearing to the Securities and Exchange Commission that there are questions concerning unusual market activity in the securities of Seiscom Delta, Inc. and questions concerning an accumulation of approximately twenty (20) percent of the company's outstanding securities by an individual and certain affiliated persons and entities and the resulting potential impact on the market for Seiscom securities, the Commission is of the opinion that the public interest and the protection of investors require a summary suspension of trading in the securities of Seiscom Delta, Inc. The Commission also orders the suspension because of the failure of such persons to make payments to various broker-dealers in connection with the acquisition and maintenance of such securities as requested.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that exchange and over-the-counter trading in the securities of Seiscom Delta, Inc. is suspended for the period from March 3, 1983 through March 12, 1983.

[6] The program will be in effect through December 31, 1983, a period of one year from January 1, 1983, the date upon which the proposed rule change was granted temporary approval. *See* note 1, *supra*.

By the Commission.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-5890 Filed 3-7-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 22865; (70-6840)]

Southern Co.; Proposal to Issue and Sell Common Stock at Competitive Bidding

March 1, 1983.

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, has filed a declaration with this Commission pursuant to sections 6(a) and 7 of the Public Utility Holding Company Act of 1935 ("Act") and Rule 50 promulgated thereunder.

Southern proposes to issue and sell at competitive bidding up to 15 million additional shares of its authorized but unissued common stock, par value $5 per share, in one or more transactions, from time to time, not later than March 31, 1984. Southern may employ alternative competitive bidding procedures in accordance with the Commission's statement of policy pursuant to Rule 50(a)(5) under the Act (HCAR No. 22623, September 2, 1982). Southern also indicates, however, that it may request at some future time that all or part of the stock sales be excepted from the competitive bidding requirements of Rule 50 should circumstances develop which, in the opinion of management, make such exception in the best interests of Southern and its investors and consumers.

Southern proposes to use the net proceeds from the sales of this common stock, together with treasury funds and the proceeds from the sales of common stock pursuant to an existing shelf registration program and through the operation of its Dividend Reinvestment and Stock Purchase Plan, Employee Savings Plan and Employee Stock Ownership Plan, to make additional equity imvestments in the form of capital contributions to its operating subsidiaries and for other corporate purposes. the subsidiaries propose to use these funds to provide a portion of their cash requirements to carry on their electric utility businesses.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by March 28, 1983, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-5891 Filed 3-7-83; 8:45 am]

BILLING CODE 8010-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 46
Tuesday, March 8, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item From March 3rd Open Meeting

March 2, 1983.

The following item has been deleted at the request of the Chairman's office from the list of agenda items scheduled for consideration at the March 3, 1983, Open Meeting and previously listed in the Commission's February 24, 1983.

Agenda, Item No., and Subject

General—1—*Title:* In re petition by AT&T for amendment of Part 2 of the FCC Rules and Regulations. *Summary:* Commission consideration of a Report and Order to amend Parts 2 and 21 to modify the calculation of necessary bandwidths for frequency modulated microwave radio relay systems.

Issued: March 2, 1983.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-318-83 Filed 3-4-83; 11:20 am]

BILLING CODE 6712-01-M

2

FEDERAL COMMUNICATIONS COMMISSION

Closed Commission Meeting, Thursday, March 3, 1983

February 24, 1983.

The Federal Communications Commission will hold a Closed Meeting on the subjects listed below on Thursday, March 3, 1983 following the Open Meeting which is scheduled to commence at 9:30 a.m., in Room 856, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

Hearing—1—"Motion for FCC Invocation of Lottery Procedures in Place of Comparative Hearing Process and Deferral of Comparative Hearing Pending such Lottery Procedures" in the Santa Fe, New Mexico, comparative FM proceeding (BC Docket Nos. 82-403 through 82-405).

Hearing—2—Application for Review of Hearing Designation Order in the Knoxville, Tennessee, comparative television proceeding (BC Docket Nos. 82-382 through 82-394).

Hearing—3—Motion to adopt a Random Selection Process in the Tahoe City, California, comparative FM proceeding (BC Docket Nos. 81-637 through 81-643).

Hearing—4—Application for Review of Hearing Designation Order in the Albuquerque, New Mexico FM radio comparative proceeding (BC Docket Nos. 82-570 through 82-580).

Hearing—5—Application for Review in the Sandpoint, Idaho comparative AM radio proceeding (BC Docket Nos. 82-724, 82-725).

Hearing—6—Application for Review of a Review Board Ruling approving a settlement agreement in the Austin, Texas, comparative TV proceeding (BC Docket Nos. 80-578, et seq.).

Hearing—7—WIOO, Inc., Carlisle, Pennsylvania, AM radio comparative renewal proceeding (Docket Nos. 21506-07).

These items are closed to the public because they concern adjudicatory matters (See 47 CFR 0.603(j)).

The following persons are expected to attend:

Commissioners and their Assistants
General Counsel and members of this staff
Managing Director and members of his staff
Chief, Office of Public Affairs and members of his staff

Action by the Commission:

Item Nos. 1 through 6, February 22, 1983. Commissioners Fowler, Chairman; Quello, Fogarty, Jones, Dawson, Rivera and Sharp voting to consider these items in Closed Session.

Item No. 7, January 19, 1983. Commissioners Fowler, Chairman; Quello, Fogarty, Jones, Dawson, Rivera and Sharp voting to consider this item in Closed Session.

This meting may be continued to following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: February 24, 1983.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-320-83 Filed 3-4-83; 11:20 am]

BILLING CODE 6712-01-M

3

FEDERAL COMMUNICATIONS COMMISSION

Closed Commission Meeting, Wednesday, March 9, 1983

March 2, 1983.

The Federal Communications Commission will hold a Closed Meeting on the subject listed below on Wednesday, March 9, 1983, which is scheduled to commence at 2 p.m., in Room 856, 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and Subject

General—1—Report and Order in the Matter of Preparations for the 1983 Region 2 Administrative Radio Conference (GEN Docket No. 80-398).

This item is closed to the public because it concerns Premature Disclosure (See 47 CFR 0.603(i)).

The following persons are expected to attend:

Commissioners and their Assistants
General Counsel and members of his staff
Managing Director and members of his staff
Chief, Office of Plans and Policy and members of his staff
Chief, Office of Science and Technology and members of his staff
Chairman, U.S. Delegation, RARC-83
Chief, Mass Media Bureau and members of his staff
Chief, Office of Public Affairs and members of his staff

Action by the Commission March 2, 1983: Commissioners Fowler, Chairman; Quello, Fogarty, Jones, Dawson, Rivera and Sharp voting to consider this item in Closed Session.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Maureen Peratino, FCC Public Affairs Office, telephone number (202) 254-7674.

Issued: March 2, 1983.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-328-83 Filed 3-4-83; 3:16 pm]

BILLING CODE 6712-01-M

4

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item From March 3rd Closed Meeting

March 3, 1983.

The following item has been deleted from the list of agenda items scheduled for consideration at the March 3, 1983, Closed Meeting and previously listed in the Commission's Public Notice of February 24, 1983.

Agenda, Item No. and Subject

Hearing—7—WIOO, Inc., Carlisle, Pennsylvania, AM radio comparative renewal proceeding (Docket Nos. 21506-07).

Issued: March 3, 1983.

William J. Tricarico,

Secretary, Federal Communications Commission.

[S-326-83 Filed 3-4-83; 3:17 pm]

BILLING CODE 6712-01-M

5

FEDERAL ENERGY REGULATORY COMMISSION

March 3, 1983

TIME AND DATE: 9 a.m. March 10, 1983.

PLACE: Room 9306, 825 North Capitol Street NE., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth P. Plumb, Secretary, telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

Consent Power Agenda—766th Meeting, March 10, 1983, Regular Meeting (9 a.m.)

CAP-1. Project No. 3412-002, City of Oxford, Kansas

CAP-2. Project No. 5313-001, Hydro Energies Corp.; Project No. 3214-000, Water Power Development Corp.; Project No. 3766-000, Vermont Electric Cooperative, Inc.

CAP-3. Omitted

CAP-4. Project No. 3738-002, Mitchell Energy Co., Inc.; Project No. 3813-000, Energenics System, Inc.; Project No. 4145-000, the City or Valentine, Nebraska; Project No. 4225-000, Ainsworth Irrigation District

CAP-5. Omitted

CAP-6. Project No. 3407-003, Cook Electric Co.; Project No. 4488-000, Big Wood Canal Co. and American Falls Reservoir District No. 2

CAP-7. Project No. 2840-003, East Columbia Basin Irrigation District, Quincy-Columbia Basin Irrigation District and South Columbia Basin Irrigation District

CAP-8. Project No. 4006-001, City of Ogdensburg

CAP-9. Project No. 5275-000, Hydro Resource Co.; Project No. 5325-000, Capital Development Co.; Project No. 6014-001, Pub. No. 1 of Lewis County, Washington; Project No. 6600-000, Eagle Power Co.

CAP-10. Docket No. ID-1997-001, Frederick W. Mielke, Jr.

CAP-11. Omitted

CAP-12. Docket No. EF80-5011-004, Western Area Power Administration

CAP-13. Omitted

CAP-14. Omitted

CAP-15. Docket No. EL83-7-000, Wholesale Customers of Ohio Edison Co. *v.* Ohio Edison Co.

CAP-16. Docket No. ER83-789-001, Minnesota Power & Light Co.

CAP-17. Docket No. ER83-267-000, Baltimore Resco

CAP-18. Docket No. ER83-242-000, Rochester Gas & Electric Co.

CAP-19. Docket Nos. ER83-248-000, ER81-736-000 and ER83-192-000, Central Illinois Public Service Co.

CAP-20. Docket No. ER83-241-000, Idaho Power Co.

CAP-21. Docket No. ER82-683-000, the Connecticut Light & Power Co.

CAP-22. Docket No. ER82-852-000, Southwestern Public Service Co.

CAP-23. Project No. 3620-001, Power Authority of the State of New York

Consent Miscellaneous Agenda

CAM-1. Docket No. Rm79-76-129 (Missouri—1), high-cost gas produced from tight formations

CAM-2. Docket No. RA82-27-000, Industrial Fuel & Asphalt of Indiana, Inc.

CAM-3. Docket No. RA81-69-000, Chevron U.S.A. Inc.

CAM-4. Docket No. RO81-67-000, Traders Oil & Royalty Co.

CAM-5. Docket No. GP82-50-000, indicated producers—Shell Oil Co., et al., in the matter of the transportation of liquid and liquefiable hydrocarbons by Natural Gas Pipelines (RM81-31); Docket No. GP82-51-000, Associated Gas Distributors, Transportation by Natural Gas Pipelines of Producer-Owned Liquids and liquefiable hydrocarbons under Title I of the Natural Gas Policy Act of 1978 (RM81-39); Docket No. GP82-52-000, Texas Eastern Transmission Corp., transportation by Natural Gas Pipelines of producer-owned liquids and liquefiable hydrocarbons (RM81-43).

CAM-6. Docket Nos. Rm80-47-002, 003, 004, 005, 006, 007, 008, 009, 010 and 011, regulations implementing Section 110 of the Natural Gas Policy Act of 1978 and establishing policy under the Natural Gas Act

CAM-7. Docket Nos. RM80-73-002 and 003, delivery allowances under Section 110 of the Natural Gas Policy Act of 1978; Docket Nos. RM80-74-002 and 003, compression allowances under Section 110 of the Natural Gas Policy Act of 1978

Consent Gas Agenda

CAG-1. Docket Nos. RP83-11-002 and RP83-30-000, Transcontinental Gas Pipe Line Corp.

CAG-2. Omitted

CAG-3. Docket Nos. RP83-35-001, RP81-109-000, RP82-37-000, and RP74-41-019 and 020, Texas Eastern Transmission Corp.

CAG-4. Omitted

CAG-5. Docket No. RP83-11, Transcontinental Gas Pipe Line Corp.

CAG-6. Docket No. TA83-1-32-002 (PGA83-1), Colorado Interstate Gas Co.

CAG-7. Docket No. RP82-22-000, El Paso Natural Gas Co.

CAG-8. Docket No. RP82-54-007, Colorado Interstate Gas Co.

CAG-9. Docket Nos. RP82-14-000, 001 and RP82-47-000, Mountain Fuel Resources, Inc.

CAG-10. Omitted

CAG-11. Docket No. STA82-478-000, ONG Red Oak Transmission Co. Oklahoma Natural Gas Co., a Division of Oneok, Inc.

CAG-12. Docket No. RP82-96-000, Southwest Gas Corp.

CAG-13. Docket Nos. IS81-60-000 and IS82-25-000, Dome Petroleum Co.

CAG-14. Docket No. OR82-2-002, Tipco Crude Oil Co. *v.* Shell Pipe Line Corp.

CAG-15. Docket No. CI83-43-001, Union Texas Petroleum Corp.; Docket No. CI83-37-001, Sun Exploration and Production Co; Docket No. CI68-1071-001, Union Oil Co. of California; Docket No. CI83-83-001, Arco Oil & Gas Company, A Division of Atlantic Richfield Co.

CAG-16. Omitted

CAG-17. Docket Nos. RI74-188-003, 004 and RI75-21-002, Independent Oil & Gas Association of West Virginia

CAG-18. Docket No. ST83-30-000, Producer's Gas Co.

CAG-19. Docket No. ST82-159-000, Louisiana Gas System, Inc.

CAG-20. Docket Nos. CP81-107-000 and CP81-108-000, Boundary Gas, Inc.; Docket Nos. CP81-296-000, 001, CP81-298-000, and CP82-470-000, Tennessee Gas Pipeline Co., a Tenneco Division of Tenneco Inc.

CAG-21. Docket No. CP82-545-001, Transcontinental Gas Pipe Line Corp.

CAG-22. Docket No. CP79-457-005, Mississippi River Transmission Corp.

CAG-23. Docket No. CP82-513-000, Gasdel Pipeline System Inc.; Docket No. CP82-513-001, Gasdel Pipeline System Inc. and Transcontinental Gas Pipe Line Corp.

CAG-24. Docket No. CP82-505-000, Natural Gas Pipeline Co. of America

CAG-25. Docket Nos. RP82-16-000, RP82-57-000 and RP81-81-000, United Gas Pipe line Co.

CAG-26. Docket No. IS83-26-000, Gulf Central Pipeline Co.

Power Agenda

I. Licensed Project Matters

P-1. Project No. 176-012, Escondido Mutual Water Co.

P-2. Docket No. EL82-9-000, South Carolina Public Service Authority
P-3. Project No. 6806-001, New York State Energy Research and Development Authority; Project No. 4113-001, Long Lake Energy Corp.; Project No. 5315-001, Phoenix Hydro Corp.; Project No. 5323-001, Village of Phoenix, New York

II. Electric Rate Matters

ER-1. Docket No. ER78-417-000, Kentucky Utilities Co.
ER-2. Omitted
ER-3. Omitted
ER-4. Docket No. ER82-616-001, Middle South Energy, Inc.
ER-5. Docket No. EF80-2011-001, United States Department of Energy—Bonneville Power Administration (System Rates)
ER-6. Docket No. QF82-231-000, Kenvil Energy Corp.

Miscellaneous Agenda

M-1. Docket No. RM83-40-000, revisions to regulations on retention of records by natural gas companies, public utilities, licensees, and oil pipeline companies
M-2. Docket No. RM81-38-000, Construction work in progress for public utilities
M-3. Reserved
M-4. Docket No. GP82-47-000, review of off-system sales program

Gas Agenda

I. Pipeline Rate Matters

RP-1. Docket No. RP80-97-022, et al., Tennessee Gas Pipeline Co., et al.
RP-2. Docket Nos. RP79-10-002 and RP80-134-007, Great Lakes Gas Transmission Co.
RP-3 (a) CP78-124-000, Northern Border Pipeline Co., (b) CP78-123-000, et al., Alaskan Northwest Natural Gas Transportation Co.
RP-4. Omitted

II. Producer Matters

CI-1. Docket Nos. CI75-45-000, 004, 005, 006, et al., Tenneco Oil Co., et al.

III. Pipeline Certificate Matters

CP-1. Docket No. CP76-500-001, Cities Service Gas Co.
CP-2. Docket No. CP84-121-000, Farmland Industries, Inc.; Docket No. CI65-700-000, CRA, Inc.

Kenneth F. Plumb,

Secretary.

[S-319-83 Filed 3-4-83; 11:19 am]

BILLING CODE 6717-01-M

6

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

February 16, 1983.

TIME AND DATE: 10 a.m., Wednesday, March 9, 1983.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Allied Chemical Corporation, Docket No. WEST 79-165-M. (Issues include whether the judge properly concluded that the operator violated 30 CFR 57.9-2, dealing with correction of equipment defects affecting safety).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5632..

[S-324-83 Filed 3-4-83; 3:15 pm]

BILLING CODE 6735-01-M

7

FEDERAL RESERVE SYSTEM

BOARD OF GOVERNORS

TIME AND DATE: 10 a.m., Monday, March 14, 1983.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTER TO BE CONSIDERED:

1. Personnel actions (appointments, promotion, assignment, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452-3204.

Dated: March 4, 1983.

James McAfee,

Associate Secretary of the Board.

[S-322-83 Filed 3-4-83; 2:40 pm]

BILLING CODE 6210-01-M

8

NATIONAL SCIENCE BOARD

DATE AND TIME:

March 17, 1983 10 a.m., closed session
March 17, 1983 10:30 a.m., open session
March 18, 1983 7:45 a.m., closed session
March 18, 1983 8 a.m., open session

PLACE: National Science Foundation, 1800 G Street NW., Washington, D.C.

STATUS: Most of this meeting will be open to the public. Parts of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Open Sessions:

Thursday, March 17, 10:30 a.m.

1. Minutes—Open Session—February 1983 Meeting.
2. Chairman's Items.
3. Director's Report.
4. Program Review—Electrical, Computer, and Systems.

Friday, March 18, 8-10 a.m.

5. Grants, Contracts, and Programs—Action Item.
6. Proposed Budget for Fiscal Year 1985.
7. NSB Annual Report—*Science Indicators—1982.*
8. Reports of Board Committees.
9. Board Representation at Advisory Committee and Other Meetings.
10. Other Business.
11. Next Meetings.

Closed Session:

Thursday, March 17, 10 a.m.

A. Minutes—Closed Session—February 1983 Meeting.
B. NSB and NSF Staff Nominees.
C. Report of 1983 Ad Hoc Nominating Committee for Board Officers.
D. Alan T. Waterman Award.
E. Vannevar Bush Award.

Friday, March 18, 7:45-8 a.m.

F. Grants, Contracts, and Programs—Action Items.

CONTACT PERSON FOR MORE INFORMATION: Ms. Margaret L. Windus, Executive Officer, NSB, 202/357-9582.

[S-321-83 Filed 3-4-83; 12:07 pm]

BILLING CODE 7555-01-M

9

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

TIME AND DATE: 10 a.m., Friday, April 8, 1983.

PLACE: Board Room, 712 Jackson Place NW., Washington, D.C. 20006.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Call meeting to order. Check quorum.
2. Adoption of proposed agenda.
3. Approval of minutes of September 13, 1982 meeting.
4. Report of Chairman.
5. Report of President.
6. Report of Executive Secretary.
7. Report of General Counsel.
8. Discussion of Awards Ceremony.
9. New Business.
10. Set date for next meeting in September, 1983.

Portions closed to the public:

1. Selection of Truman Scholars for 1983-84.

CONTACT PERSON FOR MORE INFORMATION: Malcolm C. McCormack, Executive Secretary, telephone, 202-395-4831.

March 2, 1983.

Malcolm C. McCormack,

Executive Secretary.

[S-323-83 Filed 3-4-83; 3:00 am]

BILLING CODE 6115-02-M

federal register

Tuesday
March 8, 1983

Part II

Department of Labor

Occupational Safety and Health Administration

Occupational Noise Exposure; Hearing Conservation Amendment; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR 1910

Occupational Noise Exposure; Hearing Conservation Amendment

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule

SUMMARY: This rule finalizes various aspects of the hearing conservation amendment to the occupational noise exposure standard. In January 1981, OSHA promulgated a hearing conservation amendment (46 FR 4078) requiring hearing conservation programs for all employees whose noise exposures equal or exceed an 8-hour time-weighted average (TWA) of 85 decibels (dB). The amendment was subsequently stayed for reconsideration and clarification. In August 1981, major portions of the amendment went into effect; the administrative stay was continued on other portions of the amendment and additional comments were solicited on these stayed portions (46 FR 42622).

By its action today, OSHA is (1) revoking many of the stayed provisions of the hearing conservation amendment, (2) lifting the administrative stay as to other portions of the amendments, and (3) making certain changes and corrections of a technical nature. The hearing conservation amendment to the OSHA noise standard, which is reprinted in its entirety at the end of this notice, establishes a comprehensive hearing conservation program, including exposure monitoring, audiometric testing, and training for employees with significant workplace noise exposures.

EFFECTIVE DATE: This final rule is effective April 7, 1983. Baseline audiograms must be completed by March 1, 1984. See Supplementary Information for details on effective dates.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N-3637, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone (202) 523-8148.

Copies of any portion of the record, including the Regulatory Analysis, may be obtained by contacting: Docket Officer, Docket No. OSH-11, Room S-6212, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone (202) 523-7894.

SUPPLEMENTARY INFORMATION: The recordkeeping requirements in the amendment have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. 3501, *et seq.* The OMB approval number is 1218-0048.

I. Executive Summary

The following summary briefly discusses the required components of the hearing conservation program. For a more detailed discussion and explanation of the amendment, see parts II-VI of this Supplementary Information section.

Monitoring

The hearing conservation amendment requires employers to monitor noise exposure levels in a manner that will accurately identify employees who are exposed at or above an 85-decibel (dB) 8-hour time-weighted average (TWA). The exposure measurement must include all noise within an 80 dB to 130 dB range. The requirement is performance oriented and allows employers to choose the monitoring method that best suits each individual situation.

Under this revised amendment, employees are entitled to observe monitoring procedures and, in addition, they must be notified of the results of exposure monitoring. However, the method used to notify employees is left to the discretion of the employers.

Employers must remonitor workers' exposures whenever changes in exposures are sufficient to require new hearing protectors or cause employees who were previously not included in the program because they were not exposed to an 8-hour TWA of 85 dB, to be included in the program.

Instruments used for monitoring employee exposures must be calibrated to ensure that the measurements are accurate. Since calibration procedures are unique to specific instruments, employers should follow the manufacturer's instructions to determine when and how extensively to calibrate.

Audiometric Testing

Audiometric testing not only monitors employee hearing acuity over time, but also provides an opportunity for employers to educate employees about their hearing and the need to protect it. The audiometric testing program includes baseline audiograms, annual audiograms, training and follow-up procedures. The audiometric testing program should indicate whether hearing loss is being prevented by the employer's hearing conservation program. Audiometric testing must be made available to all employees who have average exposure levels of 85 dB. A professional (audiologist, otolaryngologist, or physician) must be responsible for the program but does not have to be present when a qualified technician is actually conducting the testing. Professional responsibilities include overseeing the program and the work of the technicians, reviewing problem audiograms and determining whether referral is necessary. Both professionals and trained technicians may conduct audiometric testing. In addition to administering audiometric tests, the tester (or the supervising professional) is also responsible for ensuring that the tests are conducted in an appropriate test environment and that the audiometer works properly, for reviewing audiograms for standard threshold shifts (STS), and for identifying problem audiograms requiring further evaluation by a professional.

a. Audiograms. There are two types of audiograms required in the hearing conservation program: Baseline and annual audiograms. The baseline audiogram is the reference audiogram against which future audiograms are compared. Baseline audiograms must be provided within six months of an employee's first exposure at or above a TWA of 85 dB. Where employers are using mobile test vans to obtain audiograms, baseline audiograms must be completed within one year after an employee's first exposure to workplace noise at or above a TWA of 85 dB. Additionally, where mobile vans are used and employers are allowed to delay baseline testing for up to a year, after 6 months those employees exposed at or above 85 dB must be issued and fitted with hearing protectors to be worn until the baseline audiogram is obtained. Baseline audiograms taken before the effective date of the amendment are acceptable as baselines in the program if the professional supervisor determines that the audiogram is valid. The annual audiogram must be conducted within one year of the baseline. It is important to test hearing on an annual basis in order to identify changes in hearing acuity so that protective follow-up measures can be initiated before hearing loss progresses.

b. Audiogram evaluation. Annual audiograms must be routinely compared to baseline audiograms to determine whether the audiogram is accurate and to determine whether the employee has lost hearing ability (that is, if a standard threshold shift (STS) has occurred). An effective program depends on a uniform and protective definition of STS. STS is defined in the amendment as an average

shift in either ear of 10 dB or more at 2000, 3000 and 4000 Hz. An averaging method of determining STS was chosen because it diminishes the number of persons falsely identified as having STS who are later shown not to have had a significant change in hearing ability.

If an STS is identified, employees must be fitted or refitted with adequate hearing protectors, shown how to use them, and required to wear them. In addition, employees must be notified within 21 days from the time the determination is made that their audiometric test results showed an STS. Some employees with an STS may need to be referred for further testing if the professional determines that their test results are questionable or if they have an ear problem of a medical nature caused or aggravated by wearing hearing protectors. If the suspected medical problem is not thought to be related to wearing protectors, employees must merely be informed that they should see a physician. If subsequent audiometric tests show that the STS identified on a previous audiogram is not persistent, employees whose exposures are less than a TWA of 90-dB may discontinue the wearing of hearing protectors.

A subsequent audiogram may be substituted for the original baseline audiogram if the professional supervising the program determines that the employee has experienced a persistent STS. The substituted audiogram becomes known as the revised baseline audiogram. This substitution will ensure that the same shift is not repeatedly identified. The professional may also decide to revise the baseline audiogram after an improvement in hearing has occurred, which will ensure that the baseline reflects actual thresholds to the extent possible. Where a baseline audiogram is revised, the employer must, of course, also retain the original audiogram. In order to obtain valid audiograms, audiometers must be used, maintained, and calibrated according to specifications given in Appendices C and E of the standard.

Hearing Protectors

Hearing protectors must be available to all workers exposed at or above the action level. This requirement will ensure that employees have access to protectors before they experience a loss in hearing. Where baseline audiograms are delayed because it is inconvenient for mobile test vans to visit the workplace more than once a year, protectors must be worn by employees for any period exceeding 6 months from the time they are first exposed to 8-hour average noise levels of 85 dB or above until they receive their baseline audiograms. Hearing protector use is also mandatory for employees who have incurred standard threshold shifts, since these workers have demonstrated that they are particularly susceptible to noise.

Employees should decide, with the help of a person who is trained in fitting hearing protectors, which size and type protector is most suitable for their working environment. The protector selected should be comfortable to wear and offer sufficient attenuation to prevent hearing loss. Employees must be shown how to use and care for their protectors and must be supervised on the job to ensure that they continue to wear them correctly.

Hearing protectors must provide adequate attenuation for each employee's work environment. The employer must re-evaluate the suitability of the employee's present protector whenever there is a change in working conditions that may cause the hearing protector being used to be inadequate. If workplace noise levels increase, employees must be given more effective protectors. The protector must reduce employee exposures to at least 90 dB, or to 85 dB when an STS has occurred.

Training

Employee training is important because when workers understand the reasons for the hearing conservation program's requirements and the need to protect their hearing, they will be better motivated to participate actively in the program and to cooperate by wearing their protectors and taking audiometric tests. Employees exposed to TWA's of 85 dB and above must be trained at least annually in the effects of noise; the purpose, advantages, disadvantages and attenuation of various types of hearing protectors; the selection, fitting and care of protectors; and the purpose and procedures of audiometric testing. Training does not have to be accomplished in one session. The program may be structured in any format, and different parts my be conducted by different individuals as long as the required topics are covered. For example, audiometric procedures could be discussed immediately prior to audiometric testing. The training requirements are such that employees must be reminded on a yearly basis that noise is hazardous to hearing and that they can prevent damage by wearing a hearing protector, where appropriate, and participating in audiometric testing.

Recordkeeping

Noise exposure measurement records must be kept for two years. Records of audiometric test results must be maintained for the duration of employment of the affected employee. Audiometric test records must include the name and job classification of the employee, the date, the examiner's name, the date of acoustic or exhaustive calibration, measurements of the background sound pressure levels in audiometric test rooms, and the employee's most recent noise exposure measurement.

II. Introduction

Noise, or unwanted sound, is one of the most pervasive occupational health problems. It is a by-product of many industrial processes. Sound consists of pressure changes in a medium (usually air), caused by vibration or turbulence. These pressure changes produce waves emanating away from the turbulent or vibrating source.

Sound pressure level is a logarithmic measure of the magnitude or intensity of the pressure change: it is perceived as loudness. Sound pressure level is expressed in decibels, abbreviated dB. Because of the logarithmic scale used to measure sound pressure or noise, a small increase in decibels represents a large increase in sound energy (sound pressure is directly related to vibrational energy). Technically, each increase of 3 dB represents a doubling of sound energy; an increase of 10 dB represents a tenfold increase, and a 20 dB increase represents a 100-fold increase in sound energy.[1]

The frequency of a sound is the number of times that a complete cycle of compressions and rarefactions occurs in a second. The descriptor, which used to be "cycles per second," is now hertz, abbreviated Hz. Frequency is perceived as pitch. Most everyday sounds contain a mixture of frequencies generated by a variety of sources. A sound's frequency composition is referred to as the spectrum. For a more complete discussion of the physical properties of sound and similar background information, see 46 FR 4079–4081 (January 16, 1981).

Exposure to high levels of noise causes hearing loss and may cause other harmful health effects as well. The extent of damage depends primarily on the intensity of the noise and the

[1] For purposes of 29 CFR 1910.95 as well as the hearing conservation amendment, however, a doubling rate of approximately 5 dB is used. That is, a 5 dB increase in level is permitted each time the exposure duration is decreased by half.

duration of the exposure. Noise-induced hearing loss can be temporary or permanent. Temporary hearing loss, also called temporary threshold shift,[2] results from short-term exposures to noise, with normal hearing returning after a period of rest.

Generally, prolonged exposure to high noise levels over a period of time causes permanent damage. Therefore a person who regularly sustains a temporary loss or shift in hearing threshold from exposure to noise will eventually suffer premanent hearing loss or noise induced permanent threshold shift (NIPTS). This NIPTS is particularly insidious because it occurs very gradually over time. In fact, for a long time the worker may not notice any change in hearing acuity until the hearing loss begins to interfere with everyday communication. By then, it is too late to do anything about the hearing loss that has already been suffered.

Noise induced permanent threshold shift is not reversible and cannot be treated medically. Once a permanent threshold shift has occurred, only the further progression of hearing loss can be prevented. Noise induced hearing loss causes difficulty in interpreting sounds and in perceiving the intensity or loudness of sounds. Even if the sounds are amplified, as with a hearing aid, they remain indistinct.

Noise induced hearing loss typically starts with hearing threshold shifts in the higher frequencies. The loss usually appears first and is most severe at 4000 and 6000 Hz. If damaging noise exposure continues, the loss spreads to the lower frequencies. People with noise induced high frequency hearing loss frequently have difficulty hearing consonant sounds. Because of the crucial role the ability to distinguish consonant sounds has in the ability to understand speech, people with noise induced high frequency hearing loss characteristically have trouble understanding speech. For a more complete discussion of the health affects of noise and hearing loss, see 46 FR 4081–4113 (January 16, 1981), which is hereby incorporated by reference.

The type of hearing loss caused by exposure to noise, sensori-neural hearing loss, can be identified and measured by an audiometric examination even before a person becomes aware of a deterioration in hearing. The record of a given individual's hearing sensitivity is an audiogram. An audiogram shows hearing threshold level measured in decibels as a function of frequency measured in hertz. It indicates how intense or loud a sound at a given frequency must be before it can be perceived, and thereby provides a graphic representation of the status of the individual's hearing. With periodic audiometric testing it is possible to trace and document hearing loss, and by so doing to prevent further loss from occurring.

Evidence in the record demonstrates that many workplaces are not safe from the hazards posed by noise. Present noise exposures pose significant risk of harm to workers and this risk can be reduced by instituting hearing conservation programs for all workers exposed at or above 85 dB, as an 8-hour time-weighted average.

The hearing conservation program prescribed in the amendment to the occupational noise exposure standard, which is the subject of this document, is designed to protect workers with significant occupational noise exposures from suffering material hearing impairment even if they are subject to such noise exposures over their entire working lifetimes. The hearing conservation amendment requires employers to identify workers exposed to significant levels of workplace noise, to include workers so identified in an audiometric testing program, and to train exposed employees in the proper use and selection of hearing protectors. The provisions contained in the amendment are reasonably necessary and appropriate to provide noise exposed workers with safe and healthful employment (see 46 FR 4105–4107, January 16, 1981, for a general discussion of this issue).

III. Background

In January 1981, OSHA promulgated (46 FR 4078) a hearing conservation amendment to its occupational noise exposure standard (29 CFR 1910.95 (a) and (b)).[3] This amendment required that employees whose noise exposures equaled or exceeded an action level of 85 dB, as an 8-hour TWA,[4] be included in a hearing conservation program.

The hearing conservation amendment augmented the existing standard (29 CFR 1910.95 (a) and (b)) and specified numerous specific requirements that had to be included in each employer's hearing conservation program. The amendment added detailed provisions dealing with monitoring employee noise exposures, annual audiometric testing for employees exposed at or above a TWA of 85 dB, retesting under certain circumstances, the selection of adequate hearing protectors, employee education and training, warning signs, and the maintenance of records pertaining to exposure monitoring and audiometric testing (see paragraphs (c)–(s) of 29 CFR 1910.95, 46 FR 4161).

After the hearing conservation amendment was promulgated, the Agency received a number of requests to reconsider the amendment pursuant to the recently adopted Executive Order 12291 (see 46 FR 13193, February 17, 1981) and petitions to administratively stay the amendment. In addition, numerous requests for clarifications and interpretations of various provisions of the hearing conservation amendment were received by the Agency. A number of parties sought judicial relief under section 6(f) of the Act, requesting the court to set aside the hearing conservation amendment, alleging that various provisions were not supported by substantial evidence in the record considered as a whole.[5] As a result of the controversy and confusion generated by some of the provisions of the hearing conservation amendment, as well as the legal challenges to the amendment, it was necessary to defer the effective date of the amendment several times in order to consider the merits of the various petitions (see 46 FR 21365, April 10, 1981; 46 FR 28845, May 29, 1981; and 46 FR 39137, July 31, 1981.[6]

OSHA carefully reviewed and analyzed the comments, petitions, and requests for clarifications in light of the

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[2] A person's hearing threshold represents the level of sound that that person can just bearly hear.

[3] The existing standard (29 CFR 1910.95 (a) and (b) sets a permissible exposure level for noise at 90 dB as an 8-hour time-weighted average and requires the employer to reduce employee exposure to within this level by the use of feasible engineering controls or administrative controls. In addition, the existing standard (29 CFR 1910.95(b)(3)) requires that a "continuing effective hearing conservation program" be implemented when employee exposure exceeds 90 dB, without regard to the use of hearing protectors, but the standard does not spell out the elements of such a hearing conservation program.

[4] Assuming an exchange rate of 5 dB, the action level or trigger for initiating a hearing conservation program occurs when exposures are approximately half of the permissible exposure level (PEL), an 8-hour TWA of 90 dB.

[5] *Chocolate Manufacturers Association* v. *Occupational Safety and Health Administration of the U.S. Dept. of Labor*, No. 81–1210; *American Iron and Steel Institute et al.* v. *Secretary of Labor and OSHA*, No. 81–1991; *Chamber of Commerce* v. *OSHA, U.S. Dept. of Labor*, No. 81–1990. These cases were consolidated in the Fourth Circuit Court of Appeals. The Court is holding these cases in abeyance pending completion of the rulemaking proceeding. Fleck Industries also sued OSHA, see *Fleck Industries, Inc.* v. *OSHA*, No. 81–1409 (3rd Cir.), but the petition was subsequently withdrawn.

[6] The AFL–CIO subsequently sued to set aside the Secretary's deferral of the effective date of the hearing conservation amendment. See *AFL–CIO* v. *Donovan*, No. 81–1667 and 81–1763 (4th Cir.). On September 18, 1981 the Fourth Circuit Court of Appeals denied the motion without prejudice; the AFL–CIO subsequently moved for voluntary dismissal, and the motion was granted on November 6, 1981.

lengthy preamble to the amendment and consistent with the requirements of E.O. 12291 to evaluate regulations. Based on this review, OSHA decided that major portions of the amendment should be allowed to go into effect. A Regulatory Impact Analysis was prepared for the parts of the amendment going into effect. On August 21, 1981, the Agency lifted the administrative stay of major portions of the hearing conservation amendment, allowing the amendment to go into effect (see 46 FR 42622). The stay was continued, however, and the record reopened for additional comment on a number of other provisions that are discussed in detail below.

Generally, the record was reopened for substantive comment where there was reason to believe, based on the comments received, that there might be a more cost-effective way of accomplishing the desired result of protecting employee hearing, or where new information as to the feasibility or desirability of a particular requirement was submitted which deserved further evaluation. It was suggested that the stayed provisions were too detailed, imposed unnecessary restrictions on the operation of hearing conservation programs, were financially burdensome, and were confusing.

OSHA received a great number of submissions containing comments and evidence in response to the August Federal Register document. While many comments urged that the Agency should revoke the stayed provisions of the hearing conservation amendment, others objected to the stays of various provisions. For example, several labor groups objected to the continuation of the stays, feeling that they had an adverse effect on the enforceability of the standard. In addition, they requested that a hearing be held on the suggested changes. In response to these requests, an informal public hearing was scheduled. The hearing was convened on March 23, 1982, with Administrative Law Judge Stuart A. Levin presiding. The hearing lasted approximately five days, during which time about 50 interested parties offered testimony and evidence. At the close of the hearing, a 60-day period for receipt of post hearing comments was authorized by Judge Levin.

The provisions which went into effect in August 1981 are more performance oriented than the amendment originally promulgated in January 1981. These provisions set out certain basic elements that were thought necessary to include in industrial hearing conservation programs, while affording employers considerable flexibility in achieving the ultimate goal of the standard: conserving employee hearing. The provisions that went into effect in August allowed employers to adapt hearing conservation programs to their own operations better than those originally promulgated in January 1981.

The revised amendment being issued today has adopted a performance approach insofar as possible. This is in marked contrast with the detailed specifications of the January amendment, which did not fully consider the mandate of section 6(b)(5) of the Act that standards be expressed in terms of performance criteria where practicable. The revised amendment generally allows the employer to choose his own method of complying with the obligations imposed by the amendment. This approach is particularly appropriate where the standard applies to many different types of industrial settings and work environments. The flexibility inherent in the performance approach allows the employer, who is familiar with the unique circumstances and problems of his workplace, to use this knowledge to develop the most effective and efficient mechanism to protect his employees. The employer is given sufficient leeway to adopt a hearing conservation program which will be compatible with all of the peculiarities of the work environment and the needs of his business, rather than having to implement a number of requirements that would be inadequate, inappropriate or unnecessary in his working environment, merely because they are required by the standard. The performance approach allows and even encourages employers to develop creative and innovative methods of meeting the obligations imposed by the amendment.

It is expected that by providing some flexibility, the amendment will encourage compliance because compliance can be achieved in the manner that is the easiest under the circumstances present in the particular working environment. This is also consistent with one of the purposes of the Act, as stated in section 2(b)(1), of stimulating employers and employees to institute new programs and to perfect existing programs to provide healthful working conditions. In addition, the performance approach adopted herein is consistent with the Supreme Court ruling in *American Textile Manufacturers Institute, Inc.* v. *Donovan*, 452 U.S. 490, 101 S. Ct. 2478 (1981) suggesting that standards must be cost-effective. The revised hearing conservation amendment allows employers to adopt the most efficient method of compliance which will give the protection mandated by the amendment and achieve the goal of the standard, that is, conserving employee hearing.

As a result of new evidence placed into the record as well as testimony submitted at informal public hearings, OSHA has once again reviewed the record as it pertains to the issues in this proceeding. After carefully reconsidering the entire record, the Agency has decided to take the actions discussed in detail below. The entire hearing conservation amendment, rather than just those portions being revised, is reprinted at the end of this document. This is being done as a matter of convenience to avoid any confusion as to the various requirements of the standard.

IV. Summary of Regulatory Impact and Regulatory Flexibility Analysis

A Regulatory Impact and Regulatory Flexibility Analysis consistent with the requirements of Executive Order 12291 and the Regulatory Flexibility Act of 1980 has been prepared. The document discusses, *inter alia*, the costs of the hearing conservation provisions published in January 1981 and the costs of the provisions contained in this revised hearing conservation amendment, presents information on the relative cost-effectiveness of the two sets of provisions, and describes the impact on small business.

The total costs of the revised amendment are estimated to be $210.3 million a year, for an average cost of $41 per worker included in hearing conservation programs mandated by the amendment. For comparison, the Regulatory Impact Analysis also presents costs of the January 1981 amendment, which have been recalculated based on new information in the rulemaking record. That amendment would have cost $295.3 million a year,[7] for an average of $58 per worker, about 40 percent more than the costs of the revised amendment. After allowing for the hearing conservation activities already established, the provisions of the revised amendment are estimated to cost $197.3 million annually.

The analysis concludes that the regulation is both technologically and economically feasible for both large and small businesses. Even if firms were forced to absorb the total costs of the hearing conservation provisions, these

[7] The January 1981 Regulatory Analysis initially estimated the total costs of the hearing conservation amendment at $270 million a year (p. IV-2).

costs would represent less than 0.2 percent of profits for the industries studied. A typical small business with under 20 production workers might need to spend about $163 per year to comply with the hearing conservation amendment requirements.

The Regulatory Impact Analysis relies on the benefits calculations of the Regulatory Analysis that was prepared for the amendment promulgated on January 16, 1981. OSHA estimated that hearing conservation programs for all employees exposed above 85 dB would eliminate 212,000 cases of material impairment of hearing after 10 years, 696,000 after 30 years and 898,000 cases at equilibrium.[8] OSHA believes that the more performance-oriented provisions of the revised amendment will not significantly reduce these benefits. Therefore, the revised amendment will significantly reduce the risk of hearing impairment present in many workplaces.

Copies of the Regulatory Impact and Regulatory Flexibility Analysis can be obtained from the Docket Office, at the address listed in the "Further Information" section at the beginning of this **Federal Register** document.

V. Environmental Impact

On February 19, 1974, OSHA announced in the **Federal Register** its intention to prepare an Environmental Impact Statement assessing the impact of a standard that would be proposed for occupational noise exposure (see 39 FR 6119). Information was solicited from the public on a variety of environmentally related issues including possible environmental impacts of the recommended standard and any irreversible commitments of resources which would be involved if the standard should be implemented.

A draft Environmental Impact Statement was made available to the public on June 16, 1975 (40 FR 25525) and environmental impact was specifically an issue at the first hearing held in 1975.

A final Environmental Impact Statement was prepared in accordance with the Council on Environmental Quality (CEQ) Guidelines (40 CFR Part 1500 *et seq.*) and the Department of Labor's regulations (29 CFR Part 11) setting out procedures to be used by Department of Labor agencies to ensure compliance with the National Environmental Policy Act. The final Environmental Impact Statement was made available to the public at the time the final rule was published. The final Environmental Impact Statement concluded that the hearing conservation amendment would beneficially impact the workplace environment by reducing both the incidence and the degree of hearing loss among workers. It also concluded that the incidence of other adverse health effects associated with noise exposure might also be reduced.

In August 1981, OSHA concluded that staying the various provisions of the amendment would not have any significant environmental impact, and the Environmental Impact Statement was therefore not revised. OSHA also asked for comments on whether the Agency's action would have any significant environmental impact. No substantive comments were received on this issue. Based on the record, OSHA now concludes that the action taken today revising the amendment will have no significant environmental impact. Therefore, no revised Environmental Impact Statement is necessary.

VI. Summary and Explanation of Actions Taken

Monitoring

Monitoring provides a mechanism for measuring and evaluating the significance of an employee's occupational exposure to noise (see discussion, 46 FR at 4131 (January 16, 1981)). This is important because the senses alone are not reliable quantifiers of sound level. For example, people's perception of the relative intensities or loudness of sounds may be affected by the relative pitch of those sounds.

Monitoring of workplace noise levels is necessary for the following reasons:

(1) To identify employees who must be enrolled in the hearing conservation program;

(2) To identify employees for whom hearing protection is mandatory;

(3) To determine the amount of attenuation that hearing protectors need to provide; and

(4) To familiarize both employers and employees with the degree of the noise hazard.

The monitoring provisions in the January amendment were extensive and detailed. This document required that all employers make an initial determination as to whether any employee's exposure equalled or exceeded an 8-hour TWA of 85 dB. These determinations were to be based on exposure measurements, calculations, or other relevant information, including such elements as employee complaints about noise, indications that employees might be losing their hearing, or difficulties in understanding normal conversation in the workplace when the speaker and listener faced each other at a distance of two feet. If this initial determination was positive, the employer was required to measure personal noise doses for all or representative employees within 60 days.[9] The amendment also required that initial determinations and subsequent monitoring (if the initial determination was positive) be repeated every two years and within 60 days of any change in process or working conditions that might increase the noise level and thereby render any hearing protectors being used inadequate or which would result in the inclusion of new employees in the hearing conservation program.

The January amendment also required that all monitoring be conducted with sound level meters or dosimeters meeting certain detailed specifications. It also contained specific requirements for the calibration of measuring equipment.

Many comments, objections, requests for clarification, and petitions for administrative stays were received in response to the monitoring requirements of the January amendment. Many employers objected to the prohibition against area monitoring, asserting that the personal monitoring mandated in the January amendment was burdensome, impractical, and unnecessary for the purposes of implementing successful hearing conservation programs (Exh. 325–266–A, pp. 6–8; Exh. 325–138; Exh. 325–47; Exh. 325–57). These commenters believe that area monitoring is simpler and less costly, and that the adequacy of hearing protector attenuation can be computed from sound levels obtained for the various areas in which employees work.

Some employers maintained that the requirement for an initial determination was unnecessary, and that the conditions determining the need for monitoring were unnecessarily complicated and expensive (Exh. 325–66; Exh. 325–68; Exh. 325–70). Other commenters objected to the requirement that if the employer wished to use representative monitoring the employee with the highest exposure must be selected and measured as representative, asserting that the effect of such a requirement would be to force employers to monitor all employees. In addition, commenters objected to the periodic remonitoring requirement, stating that remonitoring every two years was costly and unnecessary, and

[8] Final Regulatory Analysis of the Hearing Conservation Amendment, January 1981, p. III–27. Equilibrium is defined as that time in the future after which all current and retired workers would have been enrolled in a hearing conservation program for their entire working lives.

[9] The January amendment did not permit area monitoring to be used to comply with the monitoring requirements (see 46 FR at 4133).

that remonitoring when there was a change in process or equipment should be sufficient (Exh. 325–68; Exh. 325–66; Exh. 325.57; Exh. 325–138; Exh. 325–214; Exh. 325–256; Exh. 325–252).

In response to these objections, OSHA decided to seek additional public input on the various monitoring provisions published in January. In August, therefore, the administrative stay was continued on many of the detailed monitoring provisions. The monitoring requirements put into effect in August were more performance oriented, and consisted of two provisions:

(e)(1) When information indicates that any employee's exposure may equal or exceed an 8-hour time-weighted average of 85 decibles, the employer shall obtain measurements for employees who may be exposed at or above that level.

(g)(2)(ii)(*b*) All continuous, intermittent, and impulsive sound levels from 80 dB to 130 dB shall be integrated into the computation.

Many comments were submitted in response to the fourteen questions related to monitoring that were raised in the August 21 **Federal Register** document (see 46 FR at 42624). Most commenters recognized the need for monitoring to implement hearing conservation programs effectively. Moreover, a majority of the parties submitting comments favored the performance-oriented monitoring requirements in the August document (Exh. 327–20; Exh. 327–51; Exh. 327–70; Exh. 327–71; Exh. 327–86; Exh. 327–99; Exh. 327–102; Exh. 327–138; Exh. 327–143; Tr. Vol. IV, p. 76, March 3, 1982). These participants felt that the rigid specifications contained in the monitoring provisions promulgated in January were not practical and could not effectively accommodate the diverse work situations encountered in the American industrial environment. For example, it was alleged that factors such as worker mobility variations in worker tasks, changing sound sources and levels, and transient work sites made personal monitoring, and even representative personal sampling, difficult and inappropriate in some circumstances (Exh. 327–70 p. 2; Exh. 327–86, p. 3). Most respondents believed that performance requirements for monitoring would allow employers the flexibility to adopt the most cost-effective and appropriate methods of noise monitoring in their particular exposure situations (Exh. 326–55; Exh. 327–70; Exh. 327–71 p. 2; Exh. 327–86; p. 2; Exh. 327–91; Exh. 327–99).

However, several labor groups objected to staying the various monitoring provisions, stating that the stay would have an adverse effect on the enforceability of the standard (Exh. 327–59; Exh 327–107; Exh. 327–136; Exh. 329–57; Exh. 345; Tr. Vol. III, pp. 31–48, March 25, 1982; Tr. Vol. IV, pp. 109–114, March 26, 1982; Tr. Vol. V, p. 273 March 29, 1982). In addition, these commenters urged OSHA to reinstate the original specification requirements, contending that they were more protective of employee health (Exh. 331–17; Tr. Vol V, p. 273, March 29, 1982). These objections are discussed more specifically below.

Area Versus Personal Sampling

The January amendment did not permit the use of area monitoring to fulfill the noise monitoring requirements (see 46 FR at 4133). The more performance-oriented monitoring provisions of the August document, however, allow the employer to use any monitoring technique, including area monitoring, that will correctly identify all employees eligible for inclusion in the hearing conservation program (i.e., those exposed at or above the action level) and will allow the employer to determine that the hearing protectors provided to employees have sufficient attenuation capability to protect the employees in their particular work environment.

The relative merits of area versus personal exposure monitoring generated a great deal of comment. A review of these submittals indicates some misunderstanding (Exh. 327–107, p. 4; Exh. 326–21; Exh. 327–32, p. 1; Exh. 384, pp. 9–11) as to what constitutes "personal" as opposed to "area" monitoring within the meaning of this standard.

Personal monitoring consists of measurements taken with the instrument microphone in the proximity of the exposed employee's ear (for a dosimeter, near the employee's shoulder or head, and for a sound level meter, not less than two inches or more than two feet from the employee's ear). Personal monitoring is generally used to obtain estimates of employee exposures or to determine the effects of different work practices on employee exposure. Personal monitoring can be done with either a sound level meter or a dosimeter.

Personal monitoring with a sound level meter usually requires the person performing the sampling to hand-hold the sound level meter near the employee's ear. Because sound level meters are only capable of taking spot measurements at the instant measured, a sampling strategy which includes sufficient sound level meter readings taken at various times and locations throughout the work shift is necessary to estimate employee exposure accurately. Personal monitoring using a dosimeter involves positioning the device on the body of the employee, with the microphone located near the employee's ear. The employee carries the dosimeter throughout the day, during which time the dosimeter is continuously recording sound levels. Employee exposure is determined simply by attaching the dosimeter to another instrument or reader and reading out the results. OSHA believes that personal monitoring is one method of providing an accurate estimate of employee exposure, and the Agency routinely uses dosimeters and personal sampling techniques for compliance purposes. As discussed below, OSHA does not believe that personal monitoring is the only method of collecting the information necessary to fulfill the needs of the hearing conservation program.

Area monitoring is any method of sampling with sound measuring instruments when the microphone is not placed in the vicinity of the employee's ear. Area monitoring is used to evaluate workplace noise for various purposes, including the design of engineering controls and estimation of employee exposures. Either a dosimeter or a sound level meter can be used for area monitoring.

A large number of commenters favored permitting the use of either area monitoring or personal monitoring to fulfill the monitoring requirement, noting that the sampling method most appropriate to a particular work situation should be selected (Exh. 327–67; Exh. 327–70; Exh. 327–86; Exh. 327–89; Exh. 327–91; Exh. 327–96; Exh. 327–102; Exh. 327–105; Exh. 327–121; Exh. 327–122; Exh. 327–135–a; Exh. 327–151; Exh. 331–11).

Many respondents pointed out that area monitoring usually is less disruptive of work flow, is generally easier to conduct, and is less costly to perform than personal monitoring (Exh. 326–35; Exh. 327–58; Exh. 327–63A; Exh. 327–103; Exh. 327–110; Exh. 327–122; Exh. 329–2; Exh. 329–16). Further, commenters asserted that area monitoring makes it easier to gauge general changes in the acoustic environment, simplifies recordkeeping, is independent of employee turnover or job reassignment, and can be as effective as personal monitoring in some acoustic environments or in association with certain work regimens (Exh. 326–41; Exh. 327–55; Exh. 327–103; Exh. 327–106; Exh. 329–2).

However, others objected to the use of area monitoring, asserting that OSHA was unjustifiably modifying the January monitoring requirements and that

allowing area monitoring and using performance requirements would be unenforceably vague (Tr. Vol. IV, p. 243, March 26, 1982; Exh. 326–41; Exh. 327–59; Exh. 327–109; Exh. 345). Additionally, other participants stated that area monitoring was not acceptable because they felt it would underestimate exposures and thereby exclude eligible employees from membership in the hearing conservation program (Exh. 326–H; Tr. Vol. III, p. 107, March 25, 1982). They supported this opinion by citing a report by Bolt Beranek and Newman (BBN) (Exh. 327–94–C), which they contended showed evidence of exposure underestimation.

BBN surveyed seven establishments in the Iron and Steel Foundry Industry (SIC 332) having a total sample size of 531 employees, and nine establishments in the Saw Mill and Planer Mill Industry (SIC 242) with a total sample size of 906 employees. The purpose of the initial study (Exh. 373–I, pp. 1–3; Exh. 327–94–C p. 2–2) was to develop a machinery noise computer model that could be used to assess the effect of occupational noise on industrial workers. After completion of the study, the data were reanalyzed to obtain a comparison of personal and area-wide monitoring techniques. All noise measurements were taken using Type 2 (or better) sound level meters. A criterion of ±3 dB variation was used to define any specific area, and this criterion was applied to all work situations.

According to the BBN study (Exh. 373–I; Exh. 327–94–C), there was little difference in the percentage of employees predicted by area versus personal monitoring as being exposed at or above a TWA of 85 dB.[10] However, when the criterion was changed to 90 dB, a substantial difference in the percentage identified was seen in one industry.[11] This difference appeared to increase as sound levels increased. Therefore, BBN concluded in part that area monitoring underestimated personal exposures, particularly at high exposure levels.

Although the BBN report does reflect a problem that would arise if area monitoring was used in all work situations, the report included results obtained with area monitoring in situations where this sampling method might not be considered appropriate. It is not surprising that substantial disagreement between area and personal samples would occur in such a case. A more reasonable use of area sampling (e.g., when work conditions were favorable) would be expected to yield much closer agreement between personal and area monitoring results.

Despite this shortcoming, the use of area monitoring may have little adverse effect on identifying employees to be included in a hearing conservation program. In fact, BBN even stated that "it is possible that * * * the area monitoring method could be used as an indicator that a hearing conservation program is required (i.e., that one or more workers have TWA's equal to, or greater than, 85 dB)" (Exh. 327–94–C, pp. 2–11).

Additionally, BBN admitted that the procedure for estimating area sound levels involved the subjective determination of the spatial distribution of measurements to encompass all sound level variations within an area. BBN reported that "Consequently, it is possible that different area sound levels could be obtained if measurements were made at arbitrarily selected locations" (Exh. 327–94–C, p. 2–4).

It seems clear that the BBN report (Exh. 373–I; Exh. 327–94–C) has been taken out of context when it is used to develop area versus personal monitoring comparisons. These data were derived, as the report clearly states, "for the purpose of developing a machinery noise computer model to be used in assessing the effect of occupational noise on the health and welfare of industrial workers" (Exh. 327–94–C, p. 2–2). BBN has also explained that, "the end result of the evaluation is a rank-ordering of the machinery items which most contribute to the noise exposure problem in each industry [of the two sampled]" (Exh. 373–I, Executive Summary). Moreover, the inaccuracies involved in area sampling may not be as great as the BBN report leads one to believe. As AISI points out, BBN's sound level meter sampling strategy "was touted as the definitive and most accurate means for determining employee exposure (and against which the allegedly inaccurate 'area monitoring' was compared)" (Exh. 367, p. 7). After reviewing the report's orginial objectives and study protocols, the AISI felt that BBN's personal monitoring "may in fact have been spot checks of employee exposures at their operating stations," and that "In fact no full shift time weighted average exposure levels were determined for each employee or even for representative employees" (Exh. 367, pp. 7–8). In addition, AISI noted that "* * * area monitoring measurements were actually measurements of a limited number of equipment types which were not selected with the goal of identifying employee exposures" (Exh. 367, p. 7). In addition, BBN allowed a 6 dB range in defining a given sound level area (i.e., ± 3 dB), which would by definition lead to disagreements between the area and personal monitoring data in certain situations.

OSHA agrees that area monitoring is not appropriate in all situations; nothing in the monitoring provisions encourages its use in inappropriate circumstances. In other words, the indiscriminate application of area monitoring to all work situations is recognized to be inappropriate. For example, where workers are highly mobile, tasks are dissimilar, a large component of impulsive sound is contained in the exposure, or there is a great deal of variation in sound level, area monitoring becomes more difficult and less appropriate. However, as indicated in numerous submittals, area monitoring can be used in many situations and is a valuable tool that should not be overlooked (Exh. 326–15; Exh. 326–34; Exh. 327–34; Exh. 327–55; Exh. 327–86; Exh. 327–89; Exh. 327–90; Exh. 327–103; Exh. 327–113; Exh. 327–133; Exh. 327–140; Exh. 329–2). One of the reasons OSHA prohibited area monitoring in the January amendment was the problem of monitoring workers who move from place to place during their workshifts. However, as unrebutted testimony at the March 1982 hearing indicated, there are many workplaces where in-plant mobility is not a factor (Tr. Vol. III, pp. 101–102, March 25, 1982). Therefore, it would be unwise to prohibit the use of area monitoring in all situations simply because it may not be useful in some circumstances.

In order to emphasize the point that area monitoring can only be used where it is appropriate, language has been added to the amendment requiring that the sampling strategy employed to measure noise must be capable of properly identifying the correct employees for inclusion in the hearing conservation program.

In addition, the revised amendment prohibits the use of area monitoring in certain situations unless the employer can show that this type of sampling strategy will produce results similar to personal sampling. This prohibition on the use of area sampling to fulfill the monitoring obligation under the hearing conservation amendment is only operative when factors are present that are generally conceded to make area monitoring inappropriate. In most instances, area sampling will not be appropriate where there are significant variations in sound levels, where there

[10] 81.9% to 87.6% for SIC 332 and 70.8% to 66.4% for SIC 242.

[11] 5.1% to 63.1% for SIC 332 and 34.2% to 34.0% for SIC 242.

is a significant amount of impulse noise present or where workers move around a lot within a particular work area or between various work areas. In recognition of the extremely wide variation among these situations and the high degree of sophistication that may be used in refining area monitoring techniques, OSHA has decided not to absolutely prohibit the use of area monitoring in the situations described above, but instead to shift the burden to the employer who wishes to use area monitoring under these circumstances to show that the results of such monitoring are equivalent to those that would be obtained using personal or representative personal sampling. The shifting of the burden of proof to the employer to show the adequacy of area sampling is appropriate under these circumstances and strikes a good balance between the need to assure adequate employee protection and the desire to give the employer sufficient flexibility in complying with the requirements to allow the use of new or innovative techniques and to adopt a compliance mode that is the least burdensome to the employer without diminishing necessary employee protection.

Typical of comments supporting the performance monitoring approach was a statement that "Monitoring should be required, but the choice between area and personal should depend upon the particular situation in the workplace" (Exh. 327–102, p. 6).

In fact, when comparing personal representative sampling of similarly situated employees of careful area sampling, Deborah Berkowitz [Health and Safety Director, Food and Beverages Trades Department, AFL–CIO] admitted, "I think you come up with the same results" (Tr. Vol. V, p. 138, March 29, 1982).

Support for a choice of monitoring technique was also voiced by Dan MacLeod, certified Industrial Hygienist with the United Brotherhood of Automobile, Aerospace, and Agricultural Implements Workers of America (UAW). Although he expressed some concern about the ability of small or non-union companies to conduct area monitoring, Mr. MacLeod stated "I think that there are a lot of locations where it would be perfectly okay to do a lot of area sampling" (Tr. Vol. III, p. 102, March 25, 1982). In addition, MacLeod specifically described certain specific work situations involving thousands of employees in which area monitoring would be appropriate (Tr. Vol. III, p. 102, March 25, 1982).

Another concern raised by commenters (Exh. 327–78; p. 5; Exh. 327–109; p. 5; Exh. 345, p. 5) was that permitting employers to use area monitoring for the purposes of the hearing conservation amendment would be contrary to OSHA's directive to its compliance personnel and field industrial hygienists. Although it is true that the Agency requires its field staff to use personal monitoring for compliance purposes, the question in this case, as John Martonik, OSHA's Deputy Director of Health Standards, pointed out at the public hearing, is "whether this much detail in specification is necessary * * * for the purposes of the Hearing Conservation Amendment * * *" (Tr. Vol. I–A, pp. 31–32, March 23, 1982).

In the compliance context, it is generally simpler for OSHA staff to use the dosimeter, although a sound level meter may also be used to obtain personal samples. This is advisable because compliance personnel are generally not familiar with the details and variations of exposure patterns within individual workplaces, and sometimes must conduct monitoring the first time they are on site. Therefore, personal monitoring is more appropriate in such a situation because it saves the compliance officer the time of determining noise exposure patterns before the sampling begins. However, the employer's familiarity with his or her own workplace should in many instances enable the employer to develop a monitoring program based on area monitoring that is just as protective as personal monitoring. When enforcing the amendment, OSHA inspections will focus on whether employers have included all employees exposed to noise at or above the action level in their hearing conservation programs. OSHA inspectors will in most cases continue to use personal sampling methods because in view of the compliance officer's purpose and lack of familiarity with each particular workplace, this method is generally easier and yields more reproducible results (see Tr. Vol. I–A, pp. 40–41, March 23, 1982).

George Taylor [ALF–CIO] and several other commenters questioned the legality of performance-oriented monitoring requirements; these participants believed that performance monitoring requirements, which remain part of the hearing conservation standard published today, are contrary to the legislative mandate of section 6(b)(7) of the Act (Exh. 327–109, pp. 5–7; Tr. Vol. V, p. 209, March 29, 1982; Tr. Vol. III, pp. 34, 37, March 25, 1982). Section 6(b)(7) of the Act states in pertinent part:

> Where appropriate, such standard [promulgated under this subsection] * * * shall provide for monitoring or measuring employee exposure at such locations and intervals, and *in such manner as may be necessary for the protection of employees.* [emphasis added]

The performance monitoring requirements contained in the hearing conservation amendment are not contrary to the mandate of section 6(b)(7) of the Act. Nothing in the Act requires personal monitoring to be used as the exclusive monitoring technique. As discussed above, in many instances area monitoring can be as effective as personal monitoring. The most cost-effective method of monitoring should be allowed, if it is appropriate in the situation. As shown above, the area method of monitoring is appropriate in many work areas. Substantial evidence in the record clearly supports the conclusion that the performance monitoring requirements prescribed in the amendment will provide the necessary protection of employees referred to in section 6(b)(7). In other words, the monitoring prescribed will identify the appropriate employees for inclusion in an employer's hearing conservation program and allow the employer to determine that any hearing protectors used have sufficient attenuation capability to protect employees. Moreover, this performance-oriented monitoring approach is clearly consistent with the mandate of section 6(b)(5) of the Act, which states that when practical, standards dealing with harmful physical agents should be drafted "in terms of objective criteria and of the performance desired."

Another objection to the performance-based monitoring provisions now used in the amendment was that they would not be enforceable (Exh. 327–109, p. 6). The Agency disagrees; the Agency believes that the standard does provide fair and reasonable warning of situations in which monitoring is required[12] and does specify what sounds should be included in the measurements.[13]

There is widespread agreement that area monitoring is appropriate in many work situations, and it is also clear that any type of monitoring may be inaccurate if it is applied inappropriately. However, OSHA also believes that the employer should be

[12] Appropriate monitoring is required when information indicates that any employee's exposure may equal or exceed an 8-hour time weighted average of 85 decibels (paragraph (d)(1) of the revised amendment).

[13] All continuous, intermittent and impulsive sound levels from 80 dB to 130 dB shall be integrated into the noise measurements (paragraph (d)(2) of the revised amendment).

permitted to develop a monitoring program, whether area or personal monitoring is chosen, that will protect exposed employees from occupationally-induced hearing loss. Therefore, it is appropriate to allow the employer to select any monitoring technique that will ensure that the objectives of the standard are met.

Also, many commenters who supported the use of area monitoring use a "worst case" method for determining which employees to include in their hearing conservation programs. These employers attribute the highest sound level in a particular area to all employees in the area (Exh. 326–11; Exh. 327–79; Exh. 327–101; Exh. 327–133; Tr. Vol. I–B, p. 118, March 23, 1982). Use of this approach would lead to the assignment of more than the required number of employees to the program. OSHA encourages employers to take a more protective posture relative to hearing conservation; i.e., to do more than the minimum required.

Some commenters suggested that OSHA provide a simplified non-mandatory monitoring guide as an appendix (Exh. 327–102, p 7; Exh. 368, p. 2). Such an appendix was seen as being particularly helpful to small businesses who were considering area sampling as an alternative monitoring method. A general non-mandatory appendix (Appendix G) has been included to familiarize employers with various approaches to monitoring as well as resources to which they may look for help in meeting their noise measuring obligations under the amendment.

OSHA's decision to permit employers to choose the most appropriate monitoring sampling strategy parallels the January amendment's performance approach toward selection of monitoring instruments. Although the January preamble (46 FR at 4136) noted that a sound level meter might be less accurate than a dosimeter "in situations where there is a significant impulse noise component," employers were given the "option of using a sound level meter, providing it is used in a manner which * * * ensures the maximum accuracy." Similarly, the monitoring provisions in the revised amendment generally permit either area or personal monitoring, providing it is used in a manner which ensures that valid data are generated.

Initial Determination

The amendment as promulgated in January required employers to make initial determinations, stating that "This determination must be based on the employer's good faith inquiry into any factors which would tend to indicate that noise exposures in the workplace are in the vicinity of an 8-hour TWA of 85 dB" (46 FR at 4131). The January amendment listed factors meriting a positive initial determination, including employee complaints about noise, difficulties in communication at a distance of approximately two feet, or measurements recording levels at or above the action level made with a sound level meter or dosimeter. OSHA stayed this requirement because "some employers maintained that the requirement for initial determination was unnecessary" (46 FR at 42624).

Although some commenters felt that the initial determination was a normal part of the monitoring process in identifying those employees exposed at or above the action level, they also felt that the initial determination was subsumed by the existing performance monitoring requirements (Exh. 326–15; Exh. 326–34; Exh. 327–101; Exh. 327–122; Exh. 329–2). In addition, some felt that the initial determination should not be a separate requirement (Exh. 327–67; Exh. 326–49; Exh. 326–54; Exh. 326–32; Exh. 326–15; Exh. 326–31; Exh. 327–76; Exh. 327–97).

Russell Hannula [Manager-Noise Services; National Loss Control Service Corporation] objected to the inclusion of employee complaints as a factor meriting a positive initial determination, noting:

> "Employee complaints are * * * not valid since these are based on a subjective determination by inexperienced people. It has been my experience that employee complaints are often related to noise that is annoying, as opposed to noise that is hazardous. Difficulties related to understanding normal conversations in the presence of background noise may be related to hearing impairment of the participants in the conversation and not to potentially hazardous noise levels" (Exh. 326–12, p. 1).

Also challenging the necessity of a separate initial determination requirement was Dr. Carl Bohl [Monsanto Fellow, Monsanto Company]. He stated:

> "* * * The need for monitoring is not disputed. Normal procedure for evaluating a work area for a hazard requires an initial determination not only to determine if an exposure is probable but, also, what instrumentation is to be used. Then, if needed, samples or measurements are taken and from this data conclusions are reached about the significance of the exposure. This is the way monitoring is performed and trying to separate initial determination from monitoring is foolishness" (Exh. 326–49, p. 1).

On the other hand, some commenters were in favor of retaining the specific language for initial determination (Exh. 326–42, p. 10; Exh. 326–11; Exh. 327–59; Exh. 327–109). They felt that an initial determination is necessary to specify when monitoring is required and when a hearing conservation program is needed. Margaret Seminario of the AFL–CIO, stated "Deletion of the initial determinations of exposure provision has removed any affirmative obligation of the employer to conduct a preliminary evaluation of noise exposure levels" (Tr. Vol. V, p. 268, March 29, 1982). Moreover, the AFL–CIO claimed it would be difficult for compliance personnel to cite employers for inadequate exposure monitoring without specific criteria such as those contained in the initial determination requirement (Exh. 327–109, p. 4).

Still other commenters favored some modification of the explicit initial determination requirements (Exh. 327–101; Exh. 327–20; Exh. 327–102). For example, some asserted that professionals with a background in acoustics should be allowed to use their judgment about initial determinations, and further that the specific factors listed as meriting a positive determination might result in needless monitoring.

OSHA believes that an initial determination is an inseparable portion of any overall performance-oriented monitoring process, and that the initial determination provision originally included in the January amendment was merely an articulation of the thought process of a person doing the monitoring. As originally promulgated, the initial determination provision might have been difficult to enforce in and of itself, since there was no requirement that it be written. Moreover, the Agency believes an initial determination is implicit in the monitoring requirements in the revised amendment. It is therefore not necessary to require it specifically.[14] Accordingly, the initial determination provisions are being revoked.

Remonitoring

The issue of remonitoring also generated considerable interest. The January promulgation required monitoring to be conducted at least every two years and within sixty days of a change in production, processes, equipment, controls or personnel that changed noise exposures to the extent that employees previously exposed below a TWA of 85 dB would be exposed at or above that level. Remonitoring was also required if the

[14] The employer's ultimate obligation is to monitor when noise exposures are at or above the action level. Regardless of the outcome of any initial determination, employers are subject to citation for failing to monitor.

change rendered the hearing protectors issued inadequate.

The January preamble also stated that sound levels tend to be affected as machinery ages, causing changes in employee exposure. Therefore, various hearing conservation amendment requirements might not be implemented without some remonitoring. Another justification for remonitoring was that "workers will be reminded of the nature and extent of their exposures and will be better motivated to participate cooperatively in the hearing conservation program, and to wear properly fitted hearing protectors" (46 FR at 4134).

The January preamble noted that many commenters were opposed to a periodic monitoring requirement, especially where noise levels were uniform over long periods of time (46 FR at 4133). Similarly, other groups (Exh. 142; Exh. 64–4; Exh. 14–862) believed "periodic monitoring was unnecessary unless there was a significant change in production process" (46 FR at 4134).

In August 1981, OSHA continued the stay of this requirement, noting that "comments [received since the promulgation] objected to the periodic monitoring requirement, stating that remonitoring every two years was costly and unnecessary, and that remonitoring when there is a change in process or equipment should be sufficient" (46 FR at 42624).

Comments and testimony submitted since the August publication were overwhelmingly in favor of some form of remonitoring (Exh. 327–59; Exh. 327–88; Exh. 327–109; Exh. 331–17; Exh. 326–62; Exh. 327–20; Exh. 327–95; Exh. 329–16). Some commenters preferred retaining periodic monitoring (Exh. 326–12; Exh. 327–59; Exh. 327–109; Exh. 327–113; Exh. 327–135; Exh. 329–36; Exh. 331–17). Generally, their rationale paraphrased that used in the January 16 preamble, i.e., sound levels tend to increase as machinery ages and may therefore alter the need for or the adequacy of a company's hearing conservation program. Comments by Robert Frase [Director of Health and Safety, United Paperworkers International Union] typified this group's concerns:

> "Monitoring of noise exposures should be done every two years to ensure noise levels are not increasing. Many machines will have increased noise as they get older and tolerances increase due to wear. * * * It is imperative that noise level monitoring be done within sixty (60) days of a change to the production process, equipment or controls. Any of these changes could potentially increase noise levels to the extent that hearing protection may be required or that existing protection would not be adequate" (Exh. 327–59, pp. 1–2).

The majority of those favoring remonitoring, however, supported it only when there was a significant change in process or equipment rather than at set time intervals (Exh. 327–89; Exh. 327–96; Exh. 327–112; Exh. 327–122; Exh. 327–149; Exh. 329–15).

For example, Julia Phillips of Du Pont stated:

> "Remonitoring is unnecessary absent some change in process, equipment or exposure pattern. Unless there is reason to suspect a change in the noise environment, the remonitoring requirement will simply add additional costs to the hearing conservation program without there being a corresponding benefit" (Exh. 326–28, pp. 2–3).

Similarly, R. W. Murray and Paul E. Toth [Ford Motor Company], indicated "it would be more appropriate to require follow-up monitoring only when there has been a significant change in production, processes, equipment, controls or personnel which impacts on employee noise exposures. Requiring routine periodic monitoring of areas where no significant changes have been made since the last monitoring would result in inefficient use of scarce resources" (Exh. 329–2, p. 1).

OSHA agrees with those commenters who recognize that conditions and sound levels in the work environment are not static over time, and that exposures may be adversely affected by these changes. OSHA believes that under certain conditions remonitoring is necessary to accomplish the objectives of the amendment. Therefore, a remonitoring requirement which is stated in performance terms has been included in this revised hearing conservation amendment. Remonitoring must be done when there is reason to believe that employee exposures may have increased to the extent that employees not already included in the hearing conservation program would need to be included. Additional monitoring must also be undertaken when there are increases in exposure sufficient to render the attenuation provided by any employee's hearing protectors inadequate. In view of the tremendous variation among workplace environments covered by this amendment, a periodic remonitoring requirement is neither necessary nor appropriate to provide adequate employee protection. Therefore, the requirement to remonitor every two years is being revoked.

Some objections were also raised concerning the rigid time frame permitted for remonitoring (60 days) in the January amendment when significant changes did occur. Commenters reported that these specific time constraints presented practical problems in arranging the remonitoring (Exh. 327–121; Exh. 331–11), because in cases where employers do not do their own monitoring, it would be difficult to arrange for a return visit by a consultant within such a short time. This type of detailed requirement is inconsistent with the performance approach adopted herein and is therefore being revoked. It should be noted, however, that the performance remonitoring provisions adopted herein will require monitoring to be conducted frequently enough to correctly identify those employees who should be included in the hearing conservation program and to allow sufficient information to be gathered to assess the adequacy of hearing protectors.

A few comments stated that it was difficult to obtain meaningful remonitoring data because of the wide variety of tasks and noise exposures of employees in their particular industries (Exh. 329–1; Exh. 360). However, OSHA believes that the performance monitoring approach in this revised amendment will accommodate this type of job site and task variability. It allows the employer the flexibility to determine if and when remonitoring is necessary.

The performance monitoring approach adopted herein also allows for the exercise of professional discretion in conducting noise monitoring, a major component of the hearing conservation program. It also allows the most cost-effective monitoring methods to be applied in establishing and maintaining the mandated hearing conservation program.

Representative Monitoring

The amendment promulgated in January permitted employers to fulfill their monitoring obligation by using representative personal sampling for employees engaged in similar work and exposed to similar noise levels, but required measuring that member of the exposed group reasonably expected to have the highest exposure. Since this result was then attributed to the remaining employees of the group, the exposures of many employees would be overestimated. Therefore, an employer using representative personal monitoring would probably include more employees in the program than were required. This "worst case" representative employee monitoring approach may be overly protective and unnecessarily expensive for the company. The alternative to representative personal monitoring allowed in the January document was to continue to monitor increasing numbers

of employees to ensure that all exposed workers are included in the program [15].

In many specific work situations, the representative monitoring approach can be more cost-effective in identifying the appropriate employees for inclusion in a hearing conservation program. The employer is not prohibited from using the "worst case" or representative approach, thereby providing a more protective program than required. However, the Agency believes the performance monitoring approach does not require that degree of specificity to accomplish the objectives of the hearing conservation amendment. OSHA is therefore revoking the representative monitoring paragraphs of the January amendment; employers may use any monitoring strategy which correctly identifies the correct employees for inclusion in the hearing conservation program.

Employee Notification

The majority of commenters supported some form of employee notification of noise levels or exposure levels (Tr. Vol. V, pp. 112–113, 3/29/82; Exh. 326–11; Exh. 326–41; Exh. 327–62; Exh. 327–64; Exh. 327–149; Exh. 327–122; Exh. 349–1). Most commenters favored a more performance-oriented approach rather than the detailed notification provisions of the January amendment, which continued to be stayed when the hearing conservation provisions went into effect in August (Exh. 326–28; Exh. 326–34; Exh. 326–35; Exh. 327–62; Exh. 327–64; Exh. 327–70; Exh. 327–76; Exh. 327–89; Exh. 327–90; Exh. 327–97; Exh. 327–101; Exh. 327–103; Exh. 327–106; Exh. 327–122; Exh. 327–129; Exh. 327–138; Exh. 329–2; Exh. 349–1; Exh. 364). Major objections were raised with regard to the detailed specifications requiring individual employee notification in writing and within 21 days, and requiring that specific exposure doses be computed for each employee (Exh. 326–12; Exh. 326–28; Exh. 326–58; Exh. 327–12; Exh. 327–71; Exh. 327–76; Exh. 327–99; Exh. 327–102; Exh. 327–105; Exh. 328–5; Exh. 349–1). Objections were also raised to including a specific notification requirement in the hearing conservation amendment when 29 CFR 1910.20, Access to Records, already provides employees with access to monitoring information (Exh. 327–76; Exh. 327–89; Exh. 327–98; Exh. 327–122; Exh. 327–136). Moreover, individual notification was said to increase costs and recordkeeping burdens (Exh. 326–35; Exh. 327–21; Exh. 327–103).

The comments that follow are representative of this view. The DuPont Company stated that individual notification is burdensome in light of the fact that "* * * employees receive adequate notification when results of their area or personal monitoring are posted. Employers should be given flexibility to determine the most effective and efficient method of communicating monitoring results to employees" (Exh. 326–28, P. 3). "Notification of employees within 21 days of monitoring is not reasonable when an outside consultant is used" (Kaiser Aluminum and Chemical Company, Exh. 327–62, p. 1). A report submitted by North Carolina OSHA asserted that industry should not be required to determine individual TWA's but instead should be required to inform employees what their area or job-equivalent TWA is (Exh. 327–84, p. 57). "The basic right of all employees to have access to their exposure records is guaranteed by another OSHA standard [29 CFR 1910.20] and need not be reiterated in the hearing conservation amendment" (American Telephone and Telegraph, Exh. 327–89). The Motor Vehicle Manufacturers Association stated that:

> "[Employee] notification would require that records of noise measurements be retained for individual employees. For individuals who are reassigned frequently, this would involve extensive remonitoring and recordkeeping. It is more appropriate to notify the employee of the representative exposure he can expect in a work area and/or job classification, and the appropriate protection which may be necessary" (Exh. 327–103, p. 2).

On the other hand, some commenters were opposed to altering the specifications of the stayed employee notification provision. Lonnie L. Johnson [Director of the National Post Office Mail Handlers * * * Union, AFL–CIO] stated: "We strongly object to the total stay of employee [exposure] notification requirements * * *" (Exh. 326–42, p. 11). The Mail Handlers also believe notification is necessary to protect and inform employees of conditions posing significant risks to their health so they may avail themselves of statutory protection. Comments from the AFL–CIO asserted that by staying the employee notification provisions, OSHA was not complying with Section 8(c)(3) of the Act, which mandates that "Each employer shall promptly notify any employee who has been or is being exposed to * * * harmful physical agents * * * at levels which exceed those prescribed by an applicable occupational safety and health standard promulgated under Section 6 * * *" George Taylor, Director of Occupational Safety and Health, AFL–CIO, contended that staying worker notification of monitoring results is not justified simply by exposure variability because that factor is present for all the hazards addressed by other Section 6(b) standards and because Section 8(c)(3) of the OSH Act mandates notification. However, the AFL–CIO admits that posting is an acceptable way to transmit worker exposure information "as long as such posting methods are fully effective in apprising workers of exposure levels" (Exh. 327–109, p. 15).

Those who opposed including employee notification in the amendment generally felt that other provisions of the hearing conservation program, such as training, would provide adequate notice of exposure (Exh. 326–62, p. 2; Exh. 327–71, p. 2; Exh. 327–93, p. 2; Exh. 327–146, p. 4). OSHA believes employees have a fundamental right to be apprised of the results of monitoring. This is consistent with the mandate of Section 8(c)(3) of the Act to notify employees of exposure. Moreover, this right of notification of exposure goes beyond the provisions of 29 CFR 1910.20 which merely requires that employees have access to exposure records upon request. This explicit requirement to inform employees has educational value and will encourage more effective and enlightened worker participation in hearing conservation programs. In recognition of the many practical objections raised, however, the Agency has decided that the time frame within which to notify employees and the requirement for individual written notifications will be revoked because such specificity is inconsistent with the general performance approach toward monitoring adopted herein. The administrative stay of the more general employee notification requirements will be lifted. The amendment now requires the employer to notify each employee who is exposed at or above the action level of the monitoring results. This allows employers the flexibility needed to communicate monitoring results in what they judge to be the most reasonable and cost-effective manner.

OSHA believes that employers will notify their employees of monitoring results as promptly as possible. Moreover, although it is no longer specifically required, employers may want to inform their employees in writing rather than orally because written notification may be helpful in gaining employee cooperation in the

[15] Employers would have to monitor the "next highest" individual in a stepwise fashion until all of those with a TWA greater than 85 dB are monitored. This technique would reduce the number of employees in the program to those deserving membership, but would also effectively require personal monitoring of most employees exposed above the action level.

hearing conservation program and in protecting the employer against allegations that employees have not been informed.

Methods of Measurement and Instrument Calibration

The method of measurement and calibration sections in the January hearing conservation amendment established specific requirements for instruments and techniques to be employed in measuring noise. In promulgating these requirements, OSHA stated, "These specifications are considered necessary in order to standardize and evaluate the measurement results" (46 FR at 4135).

The January document required dosimeters and sound level meters to meet certain criteria (e.g., ANSI specifications, specified operating ranges and specified dosimeter crest factor capabilities). The preamble stated, "By specifying minimum requirements for noise measuring instruments the Agency believes that it will better identify those workers needing audiometric testing and will help ensure that those workers requiring hearing protectors because of a significant threshold shift will be given protectors with proper attenuation to afford them adequate protection" (46 FR at 4135).

The August document continued the stay on the instrument specification provisions, the calibration requirements, and provisions specifying techniques to be applied in obtaining measurements, in response to many adverse comments about the necessity for and ability of existing equipment to meet these requirements. The August document stated, "The Agency also received comments objecting to the calibration requirements, stating that they were unnecessary" (46 FR at 42624). Additionally, microphone placement and specific sampling instructions (Appendix B in the January amendment) were stayed pending a final decision on the use of area monitoring.

The method of measurement sections which remained constituted a performance requirement. Employers were expected to integrate "* * * all continuous, intermittent, and impulsive sound levels from 80 dB to 130 dB * * * into the computation" (46 FR at 42633). Employers would choose the method and technique of measurement, providing that all appropriate employees were included in the hearing conservation program.

The August document also continued the stay on the specifications for sound measuring equipment, in response to objections about the ability of equipment to meet the requirements and the need for such specificity. The comments show considerable disagreement on the need for or amount of sound measuring equipment specification needed in the standard. Some respondents would like to retain the requirements exactly as they were stated in the January amendment (Exh. 327–59, pp. 2–3; Exh. 327–78, pp. 5–9; Exh. 345, pp. 7–8). Others wish to eliminate the specifications, so that a performance approach allowing professional judgment to be applied in evaluating specific environmental conditions could be used (e.g., continuous and intermittent noise without an impulse component) (Exh. 326–28, pp. 1–3; Exh. 327–122, p. 3; Exh. 149; Exh. 329–64). Still others preferred a modified specification requirement, which would accommodate concerns for crest factor appropriateness, ability of the equipment to integrate impulse noise, and appropriateness of an instrument operating range of 80 to 130 dB. A few participants wished the OSHA standard only to include what is contained in the current ANSI standards, and some requested a phase-in schedule for companies with existing equipment now in service (Exh. 326–1; Exh. 327–64, p. 4; Exh. 327–82–B; Exh. 327–89, p. 3; Exh. 327–98, p. 9).

Comments supporting implementation of the January amendment stated:

> "The stay of provisions * * * stating equipment performance criteria * * * weakens the protection provided by the standard * * * Without these standards, there would be no assurance of the validity and reliability of noise exposure measurements at individual workplaces" (Exh. 345).

Other commenters noted that, "* * * [There is] no justification for eliminating equipment specifications * * *" (Exh. 327–109, p. 8), and that "* * * It is entirely inconsistent to permit employers to use * * * equipment which meets no performance specifications" (Exh. 327–78, p. 8).

However, other comments contended that specifications were not needed in the standard. In addition, some commenters pointed out that "OSHA's [stayed] specification for dosimeters rendered obsolete 23,000 dosimeters * * * it would likely cost OSHA itself around one million dollars to replace its supply of instruments * * * [and] fifteen million dollars [for industry]" (Exh. 326–28, p. 3). Measuring instruments should conform to the specifications of nationally recognized consensus standards, but the specifications should not be mandated, because it might restrict the development and use of new instruments and methods (Exh. 327–122, p. 4; Exh. 327–149, p. 4).

The Agency recognizes that it is not necessary to specify dosimeter crest factor capability in workplaces without implusive noise. Similarly, it is not reasonable to require employers to purchase equipment to measure sound levels up to 120 or 130 dB if a particular worksite does not have sound levels above 100 dB. "* * * The employer should be allowed to use any instrument or measurement technique that will provide employee exposure information which will include continuous, intermittent, and impulsive sound levels * * *" (Exh. 329–64).

OSHA believes that the performance approach taken in this document clearly states the objectives of monitoring and the capabilities that will be required, where appropriate, of sound measuring equipment that may be used. All continuous, intermittent and impulsive sounds between 80 dB and 130 dB must be included in the measurement. Additionally, the employer has the ultimate responsibility to ensure that measurements will allow the proper identification and classification of employees with regard to a hearing conservation program. OSHA expects that adherence to the performance approach prescribed in the revised amendment will ensure accurate data and that the appropriate employees will be selected for the hearing conservation program. Adoption of specific ANSI standards on measuring equipment will in some circumstances limit employer flexibility in complying with the amendment without providing additional employee protection. Thus, it is difficult to see how the adoption of the ANSI standard on monitoring equipment [16] will better effectuate the purposes of the Act than the performance approach adopted in the revised amendment. Therefore, the ANSI equipment specifications contained in the January amendment are revoked. OSHA finds that the revised monitoring provisions adopted herein will better effectuate the purposes of the Act within the meaning of section 6(b)(8) than will the adoption of the ANSI standard. This approach will provide the flexibility to apply appropriate methods of measurement using equipment that meet or exceed stated expectations.

Comments concerning monitoring equipment calibration were very similar to those about equipment specifications.

[16] American National Standard Specification for Personal Noise Dosimeters, S1.25–1978 and American National Standard Specification for Sound Level Meters, S1.4—1971 (R 1976).

Supporters of calibration requirements contended that they were needed to ensure valid measurements, were not time consuming (i.e., field calibration), and were a matter of good industrial hygiene practice (Exh. 326–41; Exh. 327–22, p. 2; Exh. 327–103, p. 4).[17] Many felt that the requirement for specific detailed calibration procedures should not be attempted in a hearing conservation amendment.

Dosimeters and sound level meters used to measure employee exposures were required by the January amendment to be calibrated at specific times and in accordance with detailed specifications.[18] In response to comments (Exh. 325–33; Exh. 325–50; Exh. 325–77) that the calibration provisions were too detailed and too burdensome, the August document stayed these requirements. In the interval since August, many commenters have stressed the importance of calibration for the accurate measurement of noise exposures (Exh. 347; Exh. 331–17; Tr. Vol. III, pp. 283–284, 294–295, March 25, 1982; Exh. 345; Exh. 327–103; Exh. 326–11; Exh. 326–41; Exh. 326–12). As J. H. Stenmark [American Iron and Steel Institute] stated:

"Field calibration of sound level meters is essential and should be conducted before the measurements, during the measurements, and after the measurements on each day the instrument is used. For dosimeters which are worn all shift by the worker, field calibration should be conducted on the instrument before the shift and after the shift. Laboratory calibration should be conducted when problems are encountered during field calibrations, anytime the instruments must be repaired, and on a periodic basis" (Exh. 327–105, p. 3).

R. J. Wurm [Quest Electronics] pointed out that the use of noise measuring instruments in industrial settings increases the need for calibration: "Field equipment is always subject to rough use * * * A calibration check after any important measurement is best to confirm the reading" (Exh. 326–11, p. 3). In addition, calibration is not time consuming, burdensome, or costly, and is necessary to ensure accurate measurements (Exh. 326–12). According to Deborah Berkowitz [Food and Beverages Trades Department, AFL–CIO], "Field calibration of a sound level meter can be performed in a matter of seconds and calibration of a dosimeter may take only several minutes" (Tr. Vol. V, p. 105, March 29, 1982).

Despite the widespread recognition of the need for calibration procedures to ensure measurement accuracy, however, many commenters (Exh. 327–87; Exh. 327–89; Exh. 327–98) objected to the degree of specification in the January calibration requirement. Several respondents argued that the revised amendment should refer employers to the calibration procedures specified by the manufacturer of the particular instrument used (Exh. 327–87, p. 3; Exh. 327–91, p. 13; Exh. 327–98, p. 11; Exh. 327–101, p. 5; Exh. 327–89, pp. 3–4). According to H. M. Williams of the American Telephone and Telegraph Company (Exh. 327–89), "* * * calibration of instruments is usually unique to the instrumentation being used, and it is, therefore, best left to the manufacturer's instructions * * *." Other commenters believe that including calibration procedures in a non-mandatory appendix, to be used either by OSHA compliance personnel or employers, would provide sufficient guidance about appropriate calibration techniques (Exh. 327–99, p. 9; Exh. 327–121, p. 2; Exh. 327–102, p. 7). As the Shipbuilders Council of America reported (Exh. 327–104, p. 21):

"* * * we do not think that OSHA should specify the method of calibration of noise measuring equipment. * * * Publishing instructions to OSHA inspectors about calibration techniques * * * can greatly assist by providing models for many companies. Making such guidelines mandatory, however, unnecessarily freezes the state of the art * * *"

J. G. Tritsch, of the American Textile Manufacturers Institute, recommended (Exh. 327–106, p. 3) that "the standard * * * only require the instruments [to] be properly operative and let performance be the criteria [sic]." J. B. Browning of the Union Carbide Corporation asserted that no calibration provision should be included in the revised amendment, because methods of calibration should be determined by the professional taking the exposure measurements (Exh. 329–17).

OSHA agrees with R. K. Meyers, of the Texaco Corporation, among others, that the calibration of sound measuring equipment is essential to obtaining accurate exposure measurements (Exh. 329–15; Exh. 327–87; Exh. 329–14; Exh. 329–16; Exh. 329–57). However, the Agency believes that the diversity of sound measuring instruments and the variability in manufacturers' calibration instruments precludes total reliance on these instructions to ensure measurement accuracy. For example, some manufacturers' instructions specify calibration intervals and techniques, while others simply recommend periodic calibration. In addition, the Agency finds some merit in the view expressed by G. V. Cox of the Chemical Manufacturers Association (Exh. 327–122), that specifically addressing calibration intervals is inconsistent with the revised amendment's performance approach to monitoring instruments, which permits employers to choose the most appropriate device rather than specifying instrument type and capability.

Consideration of all the comments and testimony received on the issue of measuring instrument calibration has convinced the Agency that adopting the performance approach to instrument calibration will ensure that exposure measurements are accurate and that employers conduct calibration at the intervals and in accordance with the procedures specified in the manufacturer's instructions or those dictated by good practice. Accordingly, the revised amendment requires that all noise measuring instruments be calibrated to ensure the accuracy of exposure measurements. This approach, which was recommended by several rulemaking participants (Exh. 327–102; Exh. 327–106; Exh. 327–140; Exh. 327–149; Exh. 368), has several advantages. First, it is consistent with the revised amendment's performance orientation. In addition, it permits employers to follow the instructions recommended by the instrument's manufacturer, and to adapt these as necessary to particular circumstances of their workplaces. For example, employers are not required to return instruments to the laboratory for calibration unless they cannot be properly calibrated in the field. Moreover, contrary to the opinion expressed by George Taylor of the AFL–CIO (Exh. 327–109), OSHA believes that adopting the performance approach will better effectuate the purpose of the Act than adopting the national consensus standard because it will ensure that employers maintain their noise monitoring instruments within calibration specifications *whenever* exposure measurements are made. On the other hand, employers will not be required to perform field or laboratory calibrations that are not essential to ensuring measurement accuracy. For these reasons, OSHA is revising the amendment to include a requirement that employers calibrate all sound

[17] The January amendment required that field calibrations be done before and after each day's measurements to verify the accuracy of the measuring equipment. In addition, it required a laboratory calibration when acoustical calibration and manual adjustments could not be used to verify the accuracy of the measuring instrument.

[18] The January calibration requirements read in part: Whenever acoustical calibration and manual adjustments of the measuring equipment cannot verify the accuracy of the measuring instrument, laboratory calibration shall be performed to ensure conformance with the requirements of ANSI S1.25–1978 or S1.4–1971, as appropriate.

measuring instruments as necessary to ensure that employee exposure measurements accurately reflect the noise exposure of their employees.

Since the performance approach to monitoring allows either area or personal monitoring, the specifications for microphone placement are no longer consistent with the monitoring requirements and are also being revoked.

Many commenters requested a simplified non-mandatory version of Appendix B, which suggested a monitoring strategy to be used with sound level meters (Exh. 327–99; Exh. 327–102, p. 7; Exh. 327–121, p. 2). Appendix B, as it appeared in the January amendment (46 FR 4166–4176), was designed to implement a personal sampling program; since the amendment has been revised, this Appendix is no longer necessary and it is being revoked. As noted above, a new appendix, Appendix G, has been included to provide employers, particularly small employers, with some useful data to aid in meeting their monitoring obligations under this amendment.

As the above discussion clearly shows, the detailed monitoring requirements being revoked herein are not necessary to ensure that the noise monitoring mandated in the hearing conservation amendment achieves the goals for which it was intended: to select all employees who should be included in the hearing conservation program and to ensure that any hearing protectors used will provide adequate attenuation to protect employees in their particular workplace noise environment.

OSHA agrees with Dr. Harold Dietz [Director of Health and Environmental Services of the BF Goodrich Company], who stated:

"The company has carefully reviewed the proposed monitoring obligations, as well as complied with the performance standard which has been in effect pending the stay of the more complex requirements. In our experience, we have found the performance standard to be far superior to the more detailed monitoring requirements, and we believe that employee protection would in no way be diminished should OSHA retain the performance standard when it promulgates its final rule" (Exh. 327–86, p. 2).

Enforcement of Monitoring

The preceding section discussed the differences between the monitoring requirements of the January 1981 amendment, which contained many specifications for noise monitoring, and the revised amendment, which also requires noise monitoring but allows the employer flexibility under most circumstances to select any method as long as it achieves the defined performance goals. The revised amendment requires that the employer choose a sampling strategy designed to identify employees for inclusion in the hearing conservation program and to enable the proper selection of hearing protectors. The revised amendment, therefore, requires that the employer must choose a sampling strategy, which could be tailored for his own plant, that results in attaining the monitoring goals. Since OSHA compliance personnel use personal sampling techniques for inspection purposes, employers who use area monitoring in situations where monitoring results would be substantially different from those obtained with personal monitoring will increase their risk of being judged to be out of compliance.

Although OSHA acknowledges that many monitoring procedures may permit employers to identify employees for inclusion in the hearing conservation program, the Agency believes that personal monitoring with a dosimeter is the most accurate method of estimating employee noise exposure (employee noise exposure is expressed as a numerical value that represents the employee's noise dose). For this reason, OSHA uses the dosimeter for compliance determinations in routine workplace inspections. Since the Agency bears the burden of proof when alleging that an employer has violated an occupational safety and health standard, OSHA strives to allege violations only when relatively certain that violations have occurred. The procedures OSHA uses to obtain exposure data are therefore designed to yield the best estimates available.

Dosimeters

During the March hearings, the accuracy of dosimeters was questioned by Paul Hess, appearing for the Chocolate Manufacturers Association. Hess stated that he conducted an experiment using two or three dosimeters from the same manufacturer and that "I found variances as much as 100 percent, 120 percent or more" (Tr. Vol. II, p. 250, March 24, 1982. He concluded that he did not want dosimeters used in his workplace. The revised amendment does not require employers to use dosimeters. However, OSHA does not agree with Hess' conclusion. When Hess compared 8-hour TWA values obtained with dosimeters to calculated 8-hour TWA estimates made by sound level meters, he *assumed* that the sound level meter measurements and sampling strategy were accurate and that the variations were due to dosimeter inaccuracy. John J. Earshen, Chairman of the ANSI working group on Personal Noise Dosimeters (S1–78), addresses this matter directly (Tr. Vol. III, pp. 135–145, March 24, 1982). Earshen points out that the dosimeter's function is to measure sound in the same way as a sound level meter and to carry out automatic data processing of the measurements to calculate a time-weighted average sound level or noise exposure. When using the sound level meter, measurements must be visually obtained from the instrument and then must be manually processed (e.g., by recording the length of time of the various levels) to calculate the employee's noise exposure. Mr. Earshen stated that if a sound level meter's output were carefully recorded with a device such as a graphic level recorder, the measurement information could be mathematically processed in the same manner as the dosimeter's output. Processing of the sound level meter output in this way will theoretically give the same exposure results as the dosimeter gives. In other words, the difference between a dosimeter and a sound level meter is that the dosimeter integrates sound level information with time electronically whereas the sound level meter produces data that require manual processing. To repeat, if the sound level meter output were processed automatically, the results would be, theoretically, the same (Tr. Vol. III, pp. 135–145, March 24, 1982). The difference in results between dosimeters and sound level meters is caused by differences in human perception during the intergration of sound level meter readings. "Therefore, many of the problems that people attribute to being fundamental differences between sound level meters and dosimeters are really reflections on what an operator can and cannot do" (Tr. Vol. III, p. 137, March 24, 1982).[19]

Earshen included in his post-hearing submission an article by Warren R. Kundert entitled, "Dosimeters, Impulsive Noise, and the OSHA Hearing Conservation Amendment," which further supports OSHA's conclusion. When discussing the measurement of impulse noise, Kundert states that:

[19] Earshen claimed that if a high speed motion picture camera recorded the bouncing needle of a sound level meter and if these pictures were analyzed frame by frame to synthesize what the readings were on the sound level meter, the results would be similar to the results produced by a dosimeter. He concluded that the human eye/brain combination was not able to analyze this high speed dynamic motion properly and that this fact, rather than any flaw in the dosimeters, accounted for discrepancies between dosimeter readings and sound level meter readings (Tr. Vol. III, p. 137, March 25, 1982).

"An ordinary ANSI Type 2 sound level meter should not be used. Only an impulsive sound level meter (set to A slow) will provide sufficient accuracy when short duration impulses are present. This instrument is specified by standard IEC 651, 1979 and included in the current ANSI draft standard that will replace S1.4–1971.

We have the task of taking many readings, (10 or possibly many more) assigning to each a duration which we must estimate and then using the equation given in that OSHA regulation to find the percentage dose. It would seem that such a procedure should be automated.

We could take samples from our sound level meter automatically using a mini-computer and special interfacing equipment. Of course this equipment could not easily be moved about in a manufacturing plant. To solve this portability problem, we would record the noise signal using a tape recorder and then play the tape through our stationary impulse sound level meter and computer equipment. Can we afford the time and equipment for such a complicated procedure? Of course not! Fortunately, there is not need to. *The dosimeter will do the job for us.*

The dosimeter is really an automatic system just like the one described. On site, a small wearable package continuously monitors the A weighted sound level and solves the OSHA equation to determine the dose. The dosimeter is clearly more efficient than a manual or even an automated procedure using a sound level meter. Impulsive noises need not be a problem if care is taken to select a dosimeter capable of handling them" (Exh. 380–2, pp. 15–16, emphasis added).

Since January 1981, OSHA has received other information concerning dosimeter accuracy. This information essentially conforms with the information discussed in the January amendment. Therefore, OSHA reaffirms its January 1981 discussion, interpretations, and findings on the use of dosimeters to make measurements under 29 CFR 1910.95 (46 FR 4135 to 4139). They are repeated, in part, below (46 FR 4139):

"It has been stated (Exh. 321–47, pp. 1–2) that in certain conditions a noise dosimeter overestimates the noise dose relative to that which would be obtained using a sound level meter and timing device. OSHA believes that this situation should not occur for the following reasons: A dosimeter essentially consists of a sound level meter followed by a circuit that integrates the proper function of the A-weighted sound level. When only a sound level meter is used, sufficient data as to the temporal distribution of sound levels must be taken so as to enable the integration to be done numerically. Assuming that each instrument performs accurately and that the microphone positions are the same, the noise dose obtained with a dosimeter and that obtained using a sound level meter and a timing device should agree when the daily noise exposure is the result of several essentially constant sound levels, each experienced for an easily determined duration. OSHA has observed this kind of agreement in its compliance experience. In such cases, the noise dose can easily be obtained with a sound level meter using Table G–16a and the procedures given in Appendix A, I. However, if the sound level varies over a range of more than a few decibels and, particularly, if the sound level undergoes rather rapid excursions due to intermittent or impulse noises, it can be very difficult to obtain accurate noise doses using a sound level meter and a timing device.

OSHA therefore concludes that a properly calibrated dosimeter reads the correct dose but that the use of a sound level meter, for intermittent noise or noise with significant impluse content, may lead to an underestimate of the correct dose."

OSHA will, therefore, allow the employer to use any monitoring equipment. OSHA will evaluate compliance with the monitoring requirements by evaluating the employer's decisions for including employees in the hearing conservation program and for selecting the proper hearing protection using exposure results obtained using the dosimeters. Employers whose monitoring program fails to meet the goals of the monitoring requirements will, however, be subject to citation.

Observation of Monitoring

OSHA's January amendment required employers to provide employees with the opportunity to observe any measurements of employee noise exposure being conducted pursuant to the amendment. The January preamble noted that the right to observe monitoring is mandated by Section 8(c)(3) of the Act. The Agency also reaffirmed its belief that " * * * workers who observ[ed] the monitoring of their exposures [will] gain insight into the nature and extent of the noise hazard, and will become more involved in the hearing conservation program. This involvement should increase the motivation for proper use of ear protection, and thereby increase the effectiveness of the program" (46 FR at 4155).

In addition to the basic right to observe monitoring, the January amendment provided employees with the right to an explanation of the measurement procedures, to observe all steps related to the noise exposure measurements, and to record the results. After publication of the January amendment, OSHA received comments expressing confusion as to the amount of explanation necessary and asserting that this requirement would be overly burdensome (Exh. 325–58; Exh. 325–103; Exh. 325–245; Exh. 325–51 Exh. 325–239;). Therefore, in August, OSHA continued the stay of the paragraphs specifically requiring that employees be given an explanation of procedures, observe all steps involved, and record the results. Information was requested as to whether these stayed provisions are necessary to afford employees a meaningful opportunity to exercise their statutory right to observe monitoring.

OSHA has received many comments asking that the more detailed provisions that were stayed be deleted on the grounds that the general observation requirement on which the stay was lifted in August provides sufficient assurance of employees' right to observe monitoring [20] (Exh. 326–21; Exh. 326–31; Exh. 326–32; Exh. 326–62; Exh. 327–13; Exh. 327–26; Exh. 327–28; Exh. 327–51; Exh. 327–62; Exh. 327–71; Exh. 327–80; Exh. 327–90; Exh. 327–102; Exh. 327–105; Exh. 327–111; Exh. 327–129; Exh. 327–135; Exh. 327–138; Exh. 327–139; Exh. 327–141; Exh. 327–145; Exh. 328–5; Exh. 329–15; Exh. 364).

Several commenters suggested the language of the stayed provision concerning explanations was confusing in that it places an open-ended requirement for explanation on employers (Exh. 327–67; Exh. 327–90; Exh. 327–93; Exh. 327–136). Several others asked detailed an explanation is required (Exh. 327–21; Exh. 327–90; Exh. 327–136; Exh. 364). The Diamond Shamrock Corporation suggested "* * * because of the technical nature of the noise measurement [we] suggest that mandatory explanations be limited to the significance of observed measurements and need not include technical explanations of either the physical aspects of the noise being measured or the practice of noise measurement" (Exh. 327–95, p. 4).

The Motor Vehicle Manufacturers Association (Exh. 327–103, p. 4) and the Ford Motor Company (Exh. 329–2, p. 4) opposed the detailed specifications, claiming that they interfere in areas covered in negotiated labor agreements. Other commenters argued that explanations of exposure monitoring are

[20] As promulgated in January the observation of monitoring provisions read:

(1) The employer shall provide affected employees or their representatives with an opportunity to observe any measurements of employer noise exposure which are conducted pursuant to * * * this section.

(2) Without interfering with the monitoring procedures the observer shall be entitled to:

(i) Receive an explanation of the measurement procedures;

(ii) Observe all steps related to the noise exposure measurements performed at the place of exposure; and

(iii) Record the results obtained.

The stay of paragraphs (i)(2)(i). (ii) and (iii) was continued in the August Federal Register document. Paragraph (i)(1) was allowed to go into effect.

more easily provided in regular training sessions (Exh. 327–102, p. 7; Exh. 327–139, p. 4).

OSHA also has received many comments attesting to the need to specify the rights of employees when observing monitoring (Exh. 326–41; Exh. 326–42; Exh. 327–59; Exh. 327–78, p. 15; Exh. 327–109, p. 16; Exh. 327–136; Exh. 329–36; Exh. 329–57; Exh. 345; Exh. 347; Tr. Vol. III, p. 63, March 25, 1982; Tr. Vol. IV, p. 245, March 26, 1982; Tr. Vol. V, pp. 243–266, March 29, 1982; Tr. Vol. V, pp. 266–273, March 29, 1982). Frank Grimes of the United Steelworkers of America (Exh. 326–41, p. 3) asserted that observers need sufficient information to understand what is going on. He contended further, "* * * we do not have any indication from any other health standard that problems with the explanation provision is more than a figment of an employer's hyperactive imagination. In fact, the parties often work out any procedures that are necessary to implement this provision." The United Paperworkers International Union (Exh. 327–59, p. 3) recommended that the stay on the provisions be lifted because it "* * * will help to ensure that the worker is involved in the noise measurements and is not a passive observer who does not understand measurement procedures." The Paperworkers also specified a list of items they believe should be included in the explanation of monitoring.

OHSA has reviewed the comments submitted regarding the necessity of retaining the stayed provisions to obtain meaningful observation of monitoring. Virtually all commenters agree that observation of monitoring is an employee right and many are accustomed to providing such opportunities. We do not think that the revocation of these detailed provisions will cause the observation of monitoring provisions to become meaningless in the context of noise measurement. There are two standard ways of measuring noise exposure: The dosimeter and the sound level meter. The results obtained with a sound level meter are readily observable and understandable. When dosimeters are used the Agency assumes that the dosimeter readout would be observed by employees so long as the readout device is located in the plant. The dosimeter readout, in percentage of allowable dose or in decibels, should be self-explanatory.

The fact that provisions similar to the hearing conservation amendment's original observation of monitoring requirements have been included without apparently causing confusion in other health standards is not dispositive here because this standard covers a far greater number and variety of employers than any other health standard. Moreover, it should be noted that a number of health standards, including those covering asbestos and vinyl chloride, have observation of monitoring sections that do not specifically accord the right to receive an explanation. We are not aware of employees suffering as a result of the more abbreviated version of the observation of monitoring rights included in those standards.

In addition, OSHA finds the arguments of some commenters, that information on monitoring procedures is more effectively presented in scheduled training sessions than during actual monitoring persuasive (Exh. 327–58; Exh. 327–139; Exh. 329–17). For these reasons, OSHA has determined that in the context of the hearing conservation amendment the stayed provisions of the observation of monitoring requirements are not essential for employees to exercise their right to observe monitoring in a meaningful manner. Therefore, these detailed provisions have been revoked.

Summary

Clearly, substantial evidence in the record considered as a whole supports the conclusion that the performance-oriented monitoring requirements adopted herein are all that is necessary or appropriate to ensure the employee protection contemplated by the hearing conservation amendment. Moreover, this approach is consistent with the mandate of Section 6(b)(5) of the Act, which stipulates that standards be phrased in performance terms insofar as possible. OSHA therefore finds that the monitoring provisions prescribed herein are appropriate. This finding is based on Agency expertise and judgment as to what is necessary to achieve the goals of the amendment and on the fact that the objections raised to the performance approach adopted herein are speculative and conclusory.

Adiometric Testing

The amendment promulgated in January required that employers make audiometric testing available to all employees who had workplace noise exposures equal to or greater than an 8-hour TWA of 85 dB. After the phase-in period, initial or baseline audiograms were to be obtained within 4 months of an employee's first noise exposure at or above the action level. The audiometric testing was to be conducted by a physician, audiologist or otolaryngologist or by a technician under the supervision of one of these professionals. After the baseline audiogram, employees were to be tested at least annually and the results of this annual audiometric test were to be compared against the baseline audiogram to determine whether any deterioration of hearing had occurred. The amendment used the term significant threshold shift (STS) to denote deterioration of hearing that was substantial enough to initiate follow-up procedures to prevent further hearing loss. In response to some confusion concerning the term "significant threshold shift", OSHA has decided to use instead the term "standard threshold shift" (STS) to describe the point at which follow-up procedures are required. Under certain circumstances, the amendment required that an employee with an STS be retested to determine if the hearing loss was permanent. Under other circumstances, employees exhibiting STS's had to be referred to professionals for evaluation or counseled. Some of the audiometric test provisions generated a good deal of controversy. Some of the other provisions caused confusion and many commenters requested clarifications or interpretations. The audiometric test provisions and interpretations of some of these provisions are discussed below.

Qualifications of Technicians Administering Audiometric Tests

The January amendment [31] provided that audiometric examinations be administered by a licensed or certified audiologist, otolaryngologist or other qualified physician, or by a certified audiometric technician under the supervision of an audiologist, otolaryngologist or physician. After promulgation, commenters requested clarification of the qualifications of the technicians permitted to administer audiometric tests. In response to these requests, the Agency explained that all persons who can demonstrate "competency in administering tests and in the use and care of audiometers may administer audiometric tests required by the standard" (48 FR 42625). This would include trained technicians, hearing aid specialists, industrial hygienists, and nurses, in addition to the audiologists, otolaryngologists, and physicians who are specifically permitted by the standard to administer these tests. OSHA still endorses this interpretation. Questions raised during the recent public hearing indicate, however, that further clarification would be useful.

The standard recognizes two methods for persons to become trained in administering audiometric tests. The

[31] 29 CFR 1910.95(j)(3), 46 FR at 4162.

first is to complete a training course administered by a training institution certified by the Council of Accreditation for Occupational Hearing Conservation or a course given by another recognized training organization, and to receive a certificate upon completion of the course. The second method involves demonstrating, to the satisfaction of the professional supervisor of the hearing conservation program, that competence in test administration and audiometer use has been achieved. The wording of the amendment has been changed slightly to clarify the intent; that is, that the technician must be able to show competence in the proper use, maintenance, calibration and functioning of the particular type of audiometer being used, rather than audiometers in general. This on-the-job training approach will permit employers a substantial amount of flexibility in staffing their hearing conservation programs, while ensuring that employee audiograms are properly taken. The standard envisions that persons administering audiometric tests will ensure the appropriateness of the test environment and functionally calibrate and maintain the audiometer; in addition, this person will screen audiograms to identify problem audiograms needing further evaluation by a professional and audiograms with standard threshold shifts. OSHA agrees with J. C. Morrill [Impact Hearing Conservation], however, that the responsibility for direction of the hearing conservation program should remain "in the hands of a professional audiologist, otolaryngologist, or physician" (Exh. 327-35, p. 5), although trained technicians can perform the tasks specified above. We believe that the amendment reflects this intention.

Qualified Physician

As stated above, the hearing conservation amendment requires that certain portions of the audiometric testing program be performed by professionals, while other functions may be carried out by technicians. By the terms of the amendment, professionals include licensed or certified audiologists, otolaryngologists, and "qualified" physicians.

After publication of the January amendment, OSHA received requests for clarification of the term *qualified* preceding physician (see 29 CFR 1910.95(j)(3) and (j)(7)(ii), 46 FR at 4162). In the preamble to the August document, OSHA explained that "qualified" was intended to mean any licensed physician who believes that he or she has adequate training or knowledge to administer audiometric tests and interpret the results. The Agency gave notice in the August **Federal Register** document that it believed that the word "qualified" is unnecessary in the amendment because adequate professional judgment and responsibility can be assumed.

In response to the Agency's request for comments on this issue, many commenters (Exh. 327-24, p. 1; Exh. 327-28, p. 2; Exh. 327-35, p. 1; Exh. 327-76, p. 7; Exh. 327-77, p. 2; Exh. 327-88, p. 5; Exh. 327-95, p. 5; Exh. 327-102, p. 7; Exh. 327-106, p. 7; Exh. 327-140, p. 3) agreed with the Agency's position that the term "qualified" should be deleted because licensed physicians who undertake responsibility for audiometric testing programs are assumed to be qualified. Only one commenter, Dr. S. White of the American Speech-Language-Hearing Association, stated that the term should be retained (Exh. 327-154, p. 3). Therefore, in view of the evidence in the record, OSHA has decided to delete the term, "qualified," preceding the word physician in the audiometric testing provisions of the standard.

Baseline Audiogram

The baseline audiogram is extremely important since it is the reference against which future audiograms are compared to determine the extent to which an employee's hearing is deteriorating. If the baseline audiometric test is not conducted properly, it will not reflect the employee's true hearing thresholds, and any real changes between baseline and future tests may be masked. The January amendment required employers to obtain a baseline or first audiogram for each employee within 4 months of the employee's first exposure to workplace noise at or above an 8-hour TWA of 85 dB. The need to perform baseline audiograms early during the employee's exposure to safeguard the purity of the audiogram as much as possible was recognized. In the January preamble, OSHA made a finding that to delay baseline testing more than 4 months was not appropriate since employees might incur some hearing loss during the interval, which would cause the baseline audiogram to be elevated by temporary hearing loss (46 FR 4143). This elevation would mask the true extent of any threshold shift between baseline and future tests and would result in delayed detection of a significant threshold shift. Additionally, OSHA established the 4-month period to enable employers to exclude most seasonal and temporary workers from the audiometric testing program on the basis that audiometric testing and follow-up procedures for seasonal employees would be administratively difficult or impossible because these workers work for several employers in a season or over the year. Furthermore, OSHA allowed the 4-month period to permit employers who used distant consulting services to schedule mobile test van visits at quarterly intervals.

Commenters argued that companies relying on mobile van audiometric test services would be forced by the 4-month baseline requirement to send newly hired employees to a clinic, which would be considerably more expensive on a per employee basis than using a mobile test van. Mobile testing services frequently impose a minimum fee and it might not be practical to have the test van visit the company more than once a year. In view of the above considerations, the Agency decided to reconsider the 4-month baseline requirement. The stay was therefore continued in August, and the Agency requested data and information on this issue (see 46 FR 42625-42626).

OSHA understands the value of conducting pre-employment baseline audiograms, which are the most accurate indicators of employees' hearing levels before exposure to noise. They help to determine if changes in future audiograms represent actual shifts due to noise exposures. Several organizations and companies, including DuPont (Exh. 327-91), Shell Oil (Exh. 327-102, p. 8), Texaco (Exh. 329-15, p. 5), Motor Vehicle Manufacturers Association (Tr. Vol. II, p. 109, March 24, 1982), Reynolds Metals (Tr. Vol. I-B, pp. 270-271, March 23, 1982), Edison Electric Institute (Tr. Vol. II, p. 219, March 24, 1982), American Iron and Steel Institute (Tr. Vol. III, p. 277, March 25, 1982), and Dresser Industries (Tr. Vol. IV, p. 80, March 26, 1982) either perform or recommend pre-employment audiograms when feasible. OSHA does not believe that pre-employment audiograms are practical in many cases, or essential to protect worker hearing in the context of an industrial hearing conservation program. However, pre-employment audiograms do represent good or "ideal" practice, and OSHA encourages employers to obtain them where it is practical to do so.

Dr. L. Royster (Exh. 327-84, pp. 30-31) and others (Exh. 327-20, pp. 2-3; Exh. 327-135, p. 4; Exh. 327-119, pp. 2-3) urged that different intervals should be allowed for baseline testing, depending on the employee's exposure level. They argued that employees exposed to high levels of noise should be tested sooner than those exposed to moderate or lower levels. However, OSHA agrees with D. C. Gasaway, who stated that using different time frames to establish

baseline audiograms for employees exposed to different levels of noise would lead to administrative confusion and might cause some affected employees to be overlooked (Exh. 327–66, p. 17). Moreover, such a strategy would not solve the problem for those using mobile testing services. Others requested that the period for obtaining baseline audiograms be extended to 6 months to exclude seasonal workers in some industries who work more than 120 days but less than 180 days, and who often have a 100% turnover rate (Tr. Vol. III, p. 8, March 25, 1982; Tr. Vol. IV, p. 203, March 26, 1982).

After carefully considering the record evidence, the Agency has decided that employers who have their own audiometric testing facilities or who send their employees to clinics for testing should obtain baseline audiograms for their employees within 6 months of the employees' first exposures to workplace noise at or above the action level. The requirement to obtain baseline audiograms within 4 months of the employees' first exposure at or above the action level is being revoked. This relaxation of the time period in which to obtain baseline audiograms for those employers with in-house testing capability and those using clinics for audiometric testing is in recognition of the fact that the 4-month period allowed in January to obtain baseline audiograms was too short to permit the exclusion of many seasonal workers from the audiometric testing requirements (see Exh. 326–29; Exh. 326–30; Exh. 374, pp. 199–206; Exh. 325–64). It is neither practical nor appropriate to require audiometric testing of seasonal workers; the tenure of employment is too short to permit the type of hearing evaluation mandated by the amendment in that the employee will not be employed long enough for the employer to obtain an annual audiogram against which to compare the baseline audiogram.[22]

In January, the Agency found that it was not appropriate to delay baseline testing more than 4 months since employees' audiograms might be contaminated by temporary threshold shifts (TTS) (46 FR 4143). While this finding was undoubtedly correct when employees are exposed to high noise levels, it did not fully consider the realities of the situation. The occupational noise exposure standard (29 CFR 1910.95(a) and (b)) requires that employee exposures be reduced to within the permissible exposure limits (90 dB as a TWA). Therefore, employees are not expected to be exposed to extremely high levels of noise at any time during their employment, including during the period before the baseline audiogram is taken. Under these circumstances, the Agency finds that it is appropriate to allow the employer 6 months in which to obtain employee baseline audiograms.

Numerous commenters argued persuasively that the 4-month baseline audiogram requirement contained in the January amendment was unduly restrictive and costly for those who rely on mobile test vans because it would either necessitate three visits by the van a year or require employers to send employees to a clinic, which would involve high cost, travel time, and special testing fees (Exh. 329–15, p. 5; Exh. 327–146, pp. 18–19; Exh. 327–61, p. 2; Exh. 327–96, p. 2; Tr. Vol. I–B, pp. 208–209, 254, March 23, 1982; Tr. Vol. IV, p. 80, March 26, 1982).

Many commenters recommended that OSHA extend the 4-month baseline requirement to 1 year, provided that hearing protectors are used until a baseline audiogram is performed (Exh. 327–143, p. 5; Exh. 327–61, p. 2; Exh. 333, p. 3; Exh. 327–96, p. 2; Tr. Vol. IV, p. 209, March 26, 1982; Tr. Vol. I–B, p. 208, March 23, 1982).[23]

These participants maintained that hearing protectors would be effective in minimizing or preventing temporary threshold shift prior to the baseline audiogram (Exh. 327–61, p. 2; Exh. 327–143, p. 5; Exh. 327–96, p. 2; Tr. Vol. IV, pp. 80–81, March 26, 1982). In the words of R. Connelly of Audiometric Associates:

> "The implementation of an effective hearing conservation program should eliminate the need to obtain a baseline audiogram within the first 4 months of exposure to workplace noise. Companies should be encouraged to obtain baseline tests as soon as possible for new employees and [be] required to do so within 1 year of exposure" (Tr. Vol. IV, p. 209, March 26, 1982).

W. E. Bodenheimer [Colorado Speech and Hearing Center] noted:

> "The intent here [of the 4-month baseline requirement] was to avoid contamination by threshold shifts on the baseline audiogram, to allow employers to exclude most seasonal and temporary workers from the testing program, and avoid the problems of requiring pre-employment baseline tests.
>
> "All of these problems can be solved in a much easier and cost effective manner as far as we are concerned, particularly for those thousands of companies that rely on mobile testing services that test on-site on an annual basis.
>
> "Since the standard requires the use of personal hearing protectors and emphasizes training in the use and care of these devices, were they provided immediately to any employee at his first exposure to noise at or above a time-weighted average of 85 dB, and were their proper use enforced, a valuable and reliable baseline hearing test would be established for those employees at the time of the annual hearing testing.
>
> "This approach would be effective in preventing any threshold shift until the baseline could be established at the economic convenience of the employer.
>
> "Many companies who rely on mobile service have operations located far from cities and other urban areas. They rely on the mobile operations to go to them for baseline and annual hearing testing and for catch-up tests when possible. It would be economically disastrous for these companies and logistically impossible for the mobile services to travel to each location to conduct baseline tests within four months of exposure, or for the companies to send their employees to a local clinic or physician where the cost per employee would be much higher.
>
> "Effective industrial hearing conservation can be achieved with a program of annual hearing testing conducted in conjunction with a conscientious and enforced program of personal hearing protection use" (Tr. Vol. I–B, pp. 208–209, March 23, 1982.

OSHA agrees in principle with P. Crouch of the Refractories Institute and others (Exh. 327–28; Exh. 327–86; Exh. 327–143; Exh 327–146) that companies using mobile testing services to satisfy their audiometric testing obligations under the hearing conservation amendment should be allowed one year to obtain baseline audiograms provided that their employees exposed at or above the action level use hearing protectors until such time as the baseline audiogram is obtained. Such an approach would, however, treat employees who are to be tested using mobile test vans differently from those whose employers have their own in-house audiometric testing facilities. The former group of employees would have to wear hearing protectors for up to a year before the baseline audiogram is taken even if their exposure is below the permissible exposure level of 90 dB; the latter group of employees would not need to wear hearing protectors during the six-month period in which the employer has to obtain baseline audiograms if their exposures are below the permissible exposure level. Therefore, the amendment only requires that where the employer is using mobile test vans and wishes to take a full year to obtain baseline audiograms, employees whose exposures are below the permissible exposure level must

[22] The same rationale applies in all high turnover situations.

[23] The effect of the continued stay on the provision requiring that baseline audiograms be obtained within 4 months was to allow employers a year to obtain baseline audiograms.

wear hearing protectors from any period exceeding six months after first exposure until the baseline audiogram is obtained. This decision recognizes the practical limitations posed by the use of mobile testing vans and the logistical problems which would arise if the amendment were to require audiometric baselines to be obtained within 6 months, regardless of the size and location of the employer's firm. It also allows some flexibility for scheduling difficulties (Exh. 327-106, p. 4; Exh. 327-51; Exh. 327-91, p. 16) while minimizing the chances that the baselines will be contaminated by temporary threshold shifts as hearing protectors are only being relied upon to provide a very small amount of attenuation. Moreover, this approach is expected to substantially relieve the burden of obtaining baseline audiograms on those employers with highly transient or difficult to reach worksites.[24] R. Brisnehan of the Petroleum Equipment Suppliers Association and G. McKown of the International Association of Drilling Contractors admitted that extending the baseline requirement to 1 year would solve several of their industry's problems with complying with the audiometric test provisions of the amendment (Tr. Vol. I-B, p. 295, March 23, 1982).[25]

14 Quiet Hours

The January amendment required that employees exposed at or above the 85 dB action level be given an audiometric test to establish a baseline audiogram. That test was to be preceded by a minimum period of 14 quiet hours without exposure to workplace noise. This quiet period was intended to allow an employees's hearing to recover from any temporary threshold shift (TTS) caused by pre-test noise exposure, because TTS would mask the employee's true hearing threshold. If the baseline audiogram was contaminated by TTS, subsequent comparisons of the baseline audiogram to the annual audiogram would not show the true extent of the hearing loss since the baseline would not reflect the true hearing threshold at the time it was taken (see 46 FR 4146-4147). The wearing of hearing protectors could not be used to provide this quiet period.

After publication of the January amendment, many commenters informed OSHA that prohibiting the use of hearing protectors to provide quiet before the baseline audiogram might prove unnecessarily restrictive (Exh. 325-220; Exh. 325-248; Exh. 325-251; Exh. 325-268). The stay on this prohibition was continued in August and OSHA solicited evidence on whether hearing protectors would be effective in preventing TTS before baseline audiograms.

The Agency received many comments in favor of allowing the use of hearing protectors to supply quiet prior to the baseline audiogram (Exh. 327-103; Exh. 327-101; Exh. 327-105). On the other hand, some commenters argued that hearing protectors should not be substituted for the quiet period (Exh. 326-41; Exh. 326-42; p. 12; Exh. 327-20, p. 3). For example, F. P. Grimes of the United Steelworkers of America asserted that even close supervision of employees wearing hearing protectors before testing is not equivalent to a 14-hour pre-test quiet period (Exh. 326-41). Two professional audiologists, J. Shampan of Impact Hearing Conservation, Inc., and Dr. D. G. Harvey of Audiology Associates, Inc., expressed concern that the use of hearing protectors would not prevent TTS from contaminating the audiogram (Exh. 327-53, p. 1; Tr. Vol. V, p. 45, March 29, 1982).

Most commenters, however, stated that hearing protectors can be effective in minimizing TTS and will not interfere with obtaining a valid audiogram (Exh. 327-114, p. 23; Exh. 327-108, pp. 6-7; Exh. 327-105, p. 4; Exh. 327-101, p. 5; Exh. 327-98, p. 19; Exh. 327-97, p. 3; Exh. 327-93, p. 3; Exh. 327-89, p. 4; Exh. 327-68, pp. 2-3; Tr. Vol. II, pp. 106-107, March 24, 1982).

Dr. H. W. McCurdy, Executive Director of the American Council of Otolaryngology, asserted that a hearing protector that reduces the level of sound energy reaching the ear to 80 dBA or less will effectively reduce TTS; attenuation to this level would limit the amount of baseline contamination to less than the usual amount of audiometric measurement error (Exh. 327-151, p. 3).

An evaluation of more than 40 industrial audiometric data bases, which was conducted by Dr. L. Royster of North Carolina State University, confirms the effectiveness of hearing protection in preventing TTS contamination of the audiogram (Exh. 327-84, p. 41). As Dr. Royster reports, "proper utilization of appropriate (hearing protectors) will prevent significant contamination of the data base by TTS" (Exh. 327-84, p. 4).

Several comments claimed that valid baseline audiograms could be obtained if hearing protector use was well supervised on the day of the baseline test. In fact, this was felt to be superior to the 14-hour quiet period "without exposure to workplace noise" where employee exposures are unknown and uncontrolled (Exh. 327-113, p. 2; Exh. 327-104, p. 17; Exh. 327-51, p. 3; Exh. 327-39; p. 1; Exh. 327-35, p. 2; Exh. 327-120, pp. 2-3; Tr. Vol. I-B, pp. 193-194, 209, March 23, 1982; Tr. Vol. II, p. 222, March 24, 1982; Tr. Vol. IV, pp. 67, 107-108, March 26, 1982.

Several commenters testified to the difficulties that the prohibition against substituting hearing protectors for the 14-hour quiet period would cause. Among the problems cited were the cost of paying employees overtime wages when they were tested on unscheduled work days (Exh. 326-35; Exh. 326-43; Exh. 327-21; Exh. 327-34; Exh. 327-29; Exh. 329-64; Exh. 331-33), disruption of employee work schedules (Exh. 326-28; Exh. 326-35; Exh. 326-43; Exh. 327-21; Exh. 327-34; Exh. 327-54; Exh. 327-88; Exh. 327-90; Exh. 329-64), and the difficulty and expense associated with scheduling mobile audiometric test vans (Exh. 326-43; Exh. 327-29; Exh. 327-54; Exh. 327-90; Exh. 327-146; Exh. 331-33). Many participants stated that these problems could be overcome by permitting employees to wear hearing protectors during the 14-hour period before the baseline is taken, particularly if employees were made aware of the effects of pre-test noise exposures (Exh. 327-141, p. 4; Exh. 327-61, p. 3; Exh. 327-140, p. 4).

After thorough review and analysis of the comments and testimony received in connection with this issue, OSHA has determined that the use of hearing protectors should be permitted as a substitute for the 14-hour quiet period. The Agency concurs with the large number of commenters who testified that hearing protectors may provide sufficient attenuation to prevent noise-induced TTS from contaminating baseline audiograms. As Dr. McCurdy emphasized, * * * "[the] use of hearing protection to reduce exposure to noise prior to the baseline measurement should be permitted * * *. [An] advantage of this allowance is that it may aid in reducing TTS due to non-occupational noise exposure prior to baseline testing, if the employer makes hearing protectors available to employees for use outside the workplace. Informing employees of the

[24] Where employers with these type of workplaces do have an in-house test capability, there would, of course, be no problem in obtaining baseline audiograms within 6 months.

[25] Clearly, high employee turnover rates do not render the requirement to obtain baseline audiograms impractical when a full year is allowed to obtain the baseline. The employer has the option of waiting to see which employees stay before obtaining baseline audiograms; this may greatly reduce the number of baseline audiograms the employer will have to obtain (Tr. Vol. I-B, p. 295, March 23, 1982).

importance of avoiding excessive noise exposure on and off the job is an integral part of any hearing conservation effort * * *" (Exh. 327–151, p. 3). OSHA agrees with Dr. McCurdy that the amendment's training provisions, which require that employees be trained in the selection, fitting, use, and care of hearing protectors and the effects of noise on hearing, will also operate to increase the effectiveness of hearing protectors in the workplace.

A number of other suggestions were given to help maximize hearing protector effectiveness in preventing temporary threshold contamination of the baseline audiogram (Exh. 327–114, p. 23; Exh. 327–106, p. 3; Exh. 327–113, p. 2; Exh. 327–105, p. 4; Exh. 327–103, p. 5). For example, Mr. J. Morrill, an industrial audiologist and president of Impact Hearing Conservation, recommended that special steps be taken, such as instruction in the need to avoid high levels of noise both on and off the job and careful fitting of hearing protectors, when using hearing protectors to ensure the integrity of the baseline audiogram (Exh. 327–35). Some commenters believed that only ear muffs are suitable to provide quiet on the day of testing since their visibility makes them easily verifiable (Exh. 327–151, p. 3; Exh. 327–103, p. 5; Exh. 327–62, p. 3; Exh. 327–56, p. 2; Exh. 327–154, p. 3; Tr. Vol. II, p. 151, March 24, 1982). OSHA agrees, but has decided not to require that ear muffs (as opposed to ear plugs) be used to provide quiet before baseline audiograms for the following reasons: ear muffs may be extremely uncomfortable in hot or humid environments, the use of glasses, goggles or respirators may interfere with their effectiveness, and certain hairstyles may make it difficult to get a good seal. The revised amendment allows employers to have sufficient flexibility to choose the most appropriate method of providing a quiet period before the baseline audiogram which is consistent with the particular working environment. In some instances, ear plugs will be used, in others, ear muffs, and in some circumstances employees may be scheduled for baseline testing at the beginning of the work shift. Accordingly, the prohibition on the use of hearing protectors before baseline audiograms is being revoked. Employers or professionals supervising audiometric testing programs are, of course, free to prohibit the use of hearing protectors to provide quiet hours before the baseline audiogram if, in their judgment, the circumstances so warrant.

Avoidance of Noise Before Audiometric Tests. The January amendment required employers to notify employees of the need to avoid high levels of noise during the 14-hour period preceding their baseline audiograms. This requirement was designed to help ensure that the baseline audiogram was not contaminated with temporary threshold shift (see 29 CFR 1910.95(j)(5)(ii)(*b*), 46 FR 4162). Some commenters suggested that this requirement was unnecessary and redundant since the effect of noise exposures on audiogram results would be explained during the training required by another provision of the standard (Exh. 327–20, p. 5; Exh. 326–34, p. 5; Exh. 327–91, p. 22).

Other commenters stated that even if employees were notified of the importance of the quiet period as part of the training required by the amendment, there would be no assurance that they would actually receive this training before taking their baseline audiograms (Exh. 326–41, p. 5). Moreover, even if training were completed prior to taking a baseline audiogram, reiterating this information would still be beneficial since "repetition is a good teaching method" (Exh. 327–80, p. 2).

Moreover, other commenters felt that informing employees of the importance of avoiding noise prior to the baseline audiogram is necessary to ensure an accurate baseline (Exh. 326–31, p. 2; Exh. 326–41, p. 5; Exh. 327–12, p. 2; Exh. 327–95, p. 6; Exh. 327–102, p. 8; Exh. 327–104, p. 17; Exh. 327–131, p. 1; Exh. 327–135, p. 4; Exh. 327–143, p. 6; Exh. 327–154, p. 4; Tr. Vol I-B, pp. 200, 212, 252, 3/23/82). According to J. Toupen, attorney for the Shipbuilders Council of America:

> "Employees who are so informed [about the necessity for the quiet period] have every reason to protect themselves from excessive noise exposure, since it is in their interest for their baseline audiograms to record their hearing capacity accurately. Workers who are trained in protecting their hearing on the job will have a special incentive to follow the hearing conservation program before their baselines" (Exh. 327–104, p. 17).

Dr. S. White of the American Speech-Language-Hearing Association also believed this provision was important:

> "* * * the more information the employee has about why they should avoid the noise [prior to audiometric testing] the better. The employee would be certain * * * to want a valid audiogram * * *" (Tr. Vol. IV, p. 67, March 26, 1982.

After a thorough review of the record, OSHA has decided to lift the administrative stay on the requirement that employers tell their employees to avoid high levels of non-occupational noise during the period preceding their baseline audiograms. The Agency agrees with Dr. W. E. Bodenheimer of the Colorado Speech and Hearing Center that, "although this paragraph may be redundant because this kind of information would occur during training, which is already required by the standard, * * * retaining this requirement would supply additional support to the goal of obtaining valid and reliabe hearing testing results" (Tr. Vol. I-B, p. 212, March 23, 1982).

Although employers are not responsible for employee noise exposures sustained away from the workplace, the likelihood of non-occupational noise exposure contaminating the baseline audiogram can be substantially reduced by counseling workers of the need to avoid such exposures in the period before their baseline tests. Therefore, this requirement is necessary and appropriate for the implementation of a successful hearing conservation program.

Grandfathering of Baseline Audiograms

After publication of the January amendment, many commenters asked the Agency whether audiograms taken before the effective date of the amendment would be accepted as baseline audiograms. Most comments urged OSHA to accept these audiometric baselines, which had been taken using hearing protectors as a substitute for the 14-hour quiet period required by the amendment. In August, OSHA decided to adopt a very lenient policy on accepting baseline audiograms taken before the promulgation of the amendment:

> Since the prohibition against the use of hearing protectors to achieve the quiet hours is being stayed, OSHA will accept baseline audiograms that were taken using hearing protectors as a substitute for 14 quiet hours. The Agency will continue to accept these audiograms in the future as valid baseline audiograms regardless of the outcome of the stay, and will accept or "grandfather" older baseline audiograms that reflect substantial compliance with the audiometric test requirements of the amendment. For example, to be acceptable, baseline audiograms should be administered by a trained technician, taken at the required test frequencies (500, 1000, 2000, 3000, 4000 and 6000 Hz), in a reasonably quiet room, and with calibrated equipment. The Agency is prepared to be flexible in accepting or grandfathering old baseline audiograms because in most cases this would be more protective of the employee since old baselines will allow the true extent of the hearing loss over the years to be evaluated. Obtaining a new baseline audiogram after many years of noise exposure might be less protective since the new audiogram might show higher thresholds and the true extent of future losses would

appear smaller than when compared with the original baseline (46 FR at 42626).

The Agency received many comments in response to this statement. There was a groundswell of support for the proposition that pre-existing baseline audiograms should be acceptable and be given "grandfather" status (Exh. 326–49, p. 3; Exh. 326–54, p. 3; Exh. 326–56, p. 4; Exh. 327–19, p. 2; Exh. 327–76, p. 3; Exh. 327–87, p. 4; Exh. 327–89, p. 10; Exh. 327–96, p. 3; Exh. 327–98, p. 17; Exh. 327–101, p. 5; Exh. 327–106, p. 4, Exh. 327–112, p. 15; Exh. 327–115, p. 3; Exh. 327–121, p. 2; Exh. 327–122, pp. 5–6; Exh. 327–140, p. 4; Exh. 327–149, p. 4; Exh. 327–154, p. 5; Tr. Vol I-B, p. 193, March 23, 1982; Tr. Vol. III, p. 114, March 25, 1982; Tr. Vol. IV, p. 233, March 26, 1982. They reasoned that this policy was in the best interest of employees since in most cases these older audiograms would show lower thresholds and would better reflect the ture extent of hearing loss over the years (Exh. 327–76, p. 3; Exh. 327–88, p. 6; Exh. 327–90, p. 4; Exh. 327–96, p. 3; Exh. 327–115, p. 3; Exh. 329–17, p. 3; Tr. Vol. I-B, p. 193, March 23, 1982; Tr. Vol. IV, p. 44, March 26, 1982;) Tr. Vol. IV, p. 233, March 26, 1982. Advocates of this policy also claimed that grandfathering older audiograms would eliminate unnecessary costs (Exh. 327–76, p. 3; Exh. 327–122, pp. 5–6; Exh. 327–140, p. 4).

So great was the support generated in favor of "grandfathering" pre-existing baseline audiograms that many of these commenters requested that OSHA add language to the amendment explicitly stating that audiograms taken prior to the effective date of the amendment are acceptable as baseline audiograms (Exh. 326–49, p. 3; Exh. 326–54, p. 3; Exh. 327–76, p. 3; Exh. 327–87, p. 4; Exh. 327–88, p. 6; Exh. 327–89, p. 10; Exh. 327–98, p. 17; Exh. 327–101, p. 5; Exh. 327–122, p. 5; Exh. 327–149, p. 4; Tr. Vol. I–B, p. 193, March 23, 1982). Other commenters were less enthusiastic, asserting that older audiograms should be considered as acceptable baselines only if they have been determined to be valid and to have been taken under conditions reasonably similar to those required by the amendment (Exh. 326–49, p. 3; Exh. 326–54, p. 3; Exh. 326–56, p. 4; Exh. 327–76, p. 3; Exh. 327–87, p. 4; Exh. 327–90, p. 4; Exh. 327–96, p. 3; Exh. 327–149, p. 4; Exh. 327–154, p. 5; Exh. 329–17, p. 3; Tr. Vol. IV, pp. 44, 233–234, March 26, 1982; Tr. Vol. V, pp. 139–141, March 29, 1982).

However, others claimed that it is unfair to require old baseline audiograms to comply with the requirements of the present amendment (Exh. 327–101, p. 5) and that, at a minimum, audiograms meeting the 1974 proposal's requirements should be grandfathered (Exh. 327–98, p. 17; Exh. 327–89, p. 10). George Taylor of the AFL–CIO (Exh. 327–109, p. 12) and H. Buoy of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (Exh. 327–78, p. 13) recommended that employers conduct new baseline audiograms and then choose from among the old and new audiograms that audiogram with the lowest threshold as the employee's baseline.

OSHA believes that almost any baseline audiogram taken prior to the present amendment can be valuable in evaluating the true extent of an employee's hearing loss over time. As Dr. S. White of the American Speech-Language-Hearing Association cautioned, however:

"The grandfathering of pre-amendment audiograms should only be allowed when the supervising professional agrees that they are valid. Some previous audiograms may reflect, in part, temporary threshold shifts because of pretest noise exposure or high background noise levels in the test area. Therefore, previous test equipment, environment, and personnel should be considered. Obviously, if a hearing conservation program were in place prior to the enactment of the current amendment, the ramifications of allowing a reestablishment of baseline should also be considered. If the hearing loss had occurred prior to August of 1981, and that loss was due to industrial noise, the previous audiograms would reflect that change in hearing. As it presently stands, the reestablishment of baseline * * * would overlook the changes in hearing that took place and were already documented" (Tr. Vol. IV, p. 44, March 26, 1982).

Similarly, R. Connelly of Audiometric Associates stressed the importance of professional opinion in deciding whether to depend on a pre-existing baseline:

"I believe that * * * the older the audiogram * * * the more valuable it becomes in terms of identifying significant change. I believe that audiograms should be grandfathered as long as they appear to be reliable. I don't think there is any particular problem with that, as long as some safeguard is given to the method of comparison by an appropriate professional (Tr. Vol. IV, p. 233, March 26, 1982).

In response to a question about methods of determining the validity of old baseline audiograms, Mr. Connelly explained:

"Generally what is done is that, if they appear to be inconsistent, then the credibility, the validity of the audiogram comes into question. If they are generally consistent, then they are generally accepted as evidence" (Tr. Vol. IV, p. 234, March 26, 1982).

After review of the evidence on this issue, OSHA is reaffirming its position, stated in the August **Federal Register** document, of allowing the grandfathering of baseline audiograms. This policy is consistent with the exercise of professional judgment. It is the responsibility of the professional supervising the hearing conservation program to determine which pre-existing audiograms are acceptable and which to choose as the baseline.

Evaluation of Audiogram

The January amendment stipulated that evaluation of audiograms must be performed by an audiologist, otolaryngologist, or qualified physician to determine if the baseline is valid and whether a significant threshold shift has occurred. These professionals are responsible for supervising the employer's audiometric test program and ensuring that tests conducted by technicians are carried out properly, that the test equipment is calibrated, and that the test room is sufficiently quiet. Professional supervisors also determine the need for employee referral for further testing when test results are questionable or when problems of a medical nature are suspected. Because these professionals have extensive education and training in audiometry and the recognition of various types of hearing loss, they are considered to be the most qualified to oversee a testing program.[26]

The Agency received some comments, however, indicating that commenters had mistakenly interpreted the amendment as prohibiting technicians from reviewing routine audiograms. In the August **Federal Register** document, OSHA explained that technicians were permitted to review typical audiograms to determine STS, and that only problem audiograms were required to be reviewed by professionals (see 46 FR at 42626). This means that if technicians preliminarily review audiograms, they must refer problem audiograms or audiograms of questionable validity to an audiologist, otolaryngologist, or qualified physician for further evaluation (Exh. 327–66, pp. 50–52; Exh. 327–87, p. 4; Exh. 327–88, p. 7; Exh. 327–102, p. 3; Exh. 327–106, p. 7; Tr. Vol. I–B, p. 120, March 23, 1982). As Dr. S. White of the American Speech-Language-Hearing Association explained, it is acceptable for technicians to screen

[26] The preamble to the January amendment explained that in companies and consulting firms where audiometric test results are computerized, professionals do not have to review every audiogram but are responsible for preparing and developing the computer program to ensure that the professional reviews audiograms on a selective basis (see 46 FR 4141).

audiograms as long as the professional in charge establishes the criteria for audiogram review (Exh. 327–154, p. 5).

Some commenters urged that the Agency require professional review of all audiograms indicating STS in addition to problem audiograms (Exh. 327–106, p. 7; Exh. 327–102, p. 3). Mr. Bert Scott [Environmental Technology Corporation] argued that it is important for the professional to review every audiogram.

"ETC does not agree with OSHA's position * * * that technicians may review audiograms and give only problem audiograms to the professionals for review. ETC's 11 years of experience in reviewing hundreds of thousands of audiograms from various industrial sites reveal that trained audiometric technicians are not always capable of determining whether or not an audiogram is valid. This is especially true when a self-recording audiometer is being used. We have rarely if ever, reviewed plant audiograms and not found invalid data. We consistently found it necessary to reject audiograms generated by certified technicians. In addition to invalid testing procedures, unlikely thresholds at one or more frequencies, missing frequencies on manual testing, failure to retest frequencies to determine invalidity by microprocessors or audiometers, reversal of earphones, etc. [sic]

We observed other areas such as omission of names, dates, use of non-standard audiometric symbols on manual audiograms, out-of-date calibrations, and inconsistencies between audiometric data and medical history" (Tr. Vol. IV, pp. 137–138, March 26, 1982).

Dr. McCurdy, Director of the American Council of Otolaryngology—Head and Neck Surgery, and Dr. Summar, Medical Director of MTS Associates, Inc., also recommended that the professional should review every audiogram (Exh. 327–151, p. 5; Exh. 327–69, p. 6). As Dr. Summar explained:

"The entire Hearing Preservation Program, not just the hearing tests, must be under the direction of an experienced otolaryngologist, other physician, or audiologist. He must be personally and intimately involved in all aspects of the program in order to compare threshold results as to whether a change is present, why there is a change, and what followup steps need to be taken" (Exh. 327–69, p. 6).

OSHA does not believe that the record evidence demonstrates a need to require professionals to review every audiogram. Audiometric technicians, under the general supervison of an audiologist, otolaryngologist or physician have the skill necessary to review routine audio grams. The amendment has been revised to more clearly reflect this intent. Of course, if the supervising professional wishes to review every audiogram, he or she is free to do so.

The Agency therefore reaffirms its position, as stated in the August **Federal Register** document, which would require that professionals review problem audiograms including those of questionable validity. This procedure will help to ensure that employees whose audiograms merit further investigation will receive the necessary professional attention.

Standard Threshold Shift

In the January amendment, OSHA stated that:

"A definition and an understanding of what OSHA considers to be a significant shift of hearing threshold is very important in the proper implementation of the amendment's requirements. Without such a definition, workers and employers are unable to know the seriousness of the noise-induced hearing loss.

Identifying threshold shift as significant means that it is outside the range audiometric error (±5dB), and it is serious enough to warrant prompt attention because it is a precursor to material impairment of hearing. When threshold shifts are significant, employers must provide and fit hearing protection, and take other remedial actions depending upon whether or not the shift is permanent.

The definition of the term "significant" is critical to the effective operation of the hearing conservation program. If the definition is too stringent, spurious threshold shifts may occur and workers will be identified because of audiometer or technician error. If the definition is not stringent enough, workers will be allowed to lose too much hearing before protective actions are taken. Correctly identifying significant threshold shifts of hearing is particularly important for workers who have already begun to lose their hearing, so that the progression may be stopped before the hearing loss becomes handicapping" (46 FR 4144).

The January amendment defined a significant threshold shift (STS) as:

(i) A change in hearing threshold relative to the baseline audiogram of 20 dB or greater at any test frequency other than 500 Hz in either ear, if no previous audiograms have thresholds that exceed 25 dB with reference to audiometric zero as specified by American National Standard S3.6–1969; or

(ii) A change in hearing threshold relative to the baseline audiogram of 10 dB or greater at 1,000 or 2,000 Hz, 15 dB at 3,000 or 4,000 Hz, or 20 dB at 6,000 Hz, in either ear, if any previous audiogram has one or more thresholds that exceed 25 dB with reference to audiometric zero; or

(iii) A change in hearing threshold relative to the baseline audiogram of 10 dB or greater at any test frequency other than 500 Hz in either ear, if any previous audiogram has thresholds exceeding an average of 25 dB with reference to audiometric zero at the frequencies 1,000, 2,000 and 3,000 Hz; or

(iv) A change in hearing threshold relative to the baseline audiogram of 10 dB or greater at any test frequency other than 500 Hz in either ear, if the employee has previously suffered one or more permanent significant threshold shifts.

Thus the January definition of STS reflected a "sliding scale" approach, with the amount of hearing loss constituting a significant threshold shift becoming smaller as the worker's hearing loss becomes greater. (For a more complete discussion of the definition of STS promulgated in January, see 46 FR 4144–4145).

According to many commenters, the STS definition included in the January amendment would permit too many employees, or certain groups of employees, to suffer occupationally-induced hearing loss without detection (Exh. 328–21, p. 3; Exh. 326–28, p. 5; Exh. 327–13, p. 5), while others maintained that OSHA's definition would result in a large number of "false-positives" (i.e., persons initially identified as having STS although subsequent audiometric tests show they have not had a shift in hearing threshold) (Exh. 327–91, p. 30; Exh. 325–30; Exh. 327–101, p. 7; Exh. 327–138, p. 6; Exh. 327–151, p. 10). [27] Although a number of contributors supported OSHA's January STS definition (Exh. 327–35, p. 4; Exh. 327–86, p. 6; Exh. 327–97, p. 5; Exh. 327–136, p. 6), others stated that it was too complicated to be used in the field (Tr. Vol. II, pp. 170–171, March 24, 1982; Exh. 326–28, p. 5; Exh. 325–34; Exh. 327–84; Exh. 327–140, p. 4), or would require the use of a computer to analyze statistical trends in audiogram results (Exh. 327–135, p. 7; Exh. 325–48, Exh. 327–22, p. 3; Exh. 327–151, pp. 10–11).

OSHA agrees that defining the STS in a manner that requires computer analysis or extensive computation will not encourage voluntary compliance, and will additionally place a disproportionate burden on small and medium-sized employers. The Agency also believes, after a thorough review of the rulemaking record, that the January amendment's STS definition might require unnecessarily complex calculations and might prove difficult to administer because the definition differs for employees who have previously experienced STS and those who have not.

The August document (46 FR 42822) continued the interim stay on the definition of STS, noting that OSHA had received many comments requesting the Agency to reconsider this important definition (Exh. 325–274; Exh. 325–268). The Agency has reviewed the comments

[27] For example, according to W. Carey, Chocolate Manufacturer's Association, this criteria resulted in medical referrals for 30% of the non-noise exposed population and 75% of the noise exposed population (Tr. Vol. II, p. 299, March 24, 1982).

in the record thoroughly and has reevaluated the available evidence pertaining to a definition of STS. The great majority of comments supported the inclusion of a standardized definition of STS in any revised hearing conservation amendment promulgated by the Agency (Exh. 326–42, p. 13; Exh. 326–49, p. 3; Exh. 327–13, p. 5; Exh. 329–16, p. 8; Exh. 331–33; Exh. 327–109; Tr. Vol. V, p. 270, March 29, 1982; Exh. 327–89, p. 6).

The STS concept is essential to the proper working of any hearing conservation program because, as R. F. Boggs of Organization Resources Counselors noted, those conducting audiometric examinations need to have a "flag" to indicate when additional testing or evaluation is needed (Exh. 327–98, p. 15). Further, a standardized definition of STS permits both the seriousness of an employee's hearing loss and the effectiveness of an employer's hearing conservation program to be evaluated and monitored (Exh. 327–66, pp. 48–49; Exh. 327–89, p. 6; Exh. 327–94, p. 3; Exh. 327–99). R. G. Wieneck, of General Motors, summarized the need for a standardized definition of STS by describing it as the benchmark for evaluating audiograms to determine whether hearing is being conserved (Exh. 327–99). Margaret Seminario of the AFL–CIO also pointed out that the absence of a standardized definition would mean that "the level of employees' protection will be highly variable * * * in direct conflict with OSHA Act requirements to set standards that are protective of employee's health" (Tr. Vol. V, p. 270, March 26, 1982).

However, as the American Council of Otholaryngology emphasized (Exh. 327–152, p. 5), it is important to distinguish between threshold shifts defined as significant, which merely trigger in-house hearing conservation program activities such as providing employee training and hearing protectors, and a criterion used for medical referral. As the Council stated, STS should be defined in a way that will detect the least amount of hearing loss in excess of test-retest variability, while othologic referral criteria are intended to detect substantial abnormalities * * *" (Exh. 327–152, p. 5). In accordance with these and other comments and recommendations, OSHA reaffirms the need for a standardized definition of significant threshold shift [25] in the hearing conservation amendment. Correctly identifying standard threshold shifts will enable employers and employees to take corrective action so that the progression of hearing loss may be stopped before it becomes handicapping. Moreover, a standardized definition of STS will ensure that the protection afforded to exposed employees is uniform in regard to follow-up procedures.

After much review and reconsideration OSHA reaffirms its position on the ideal criterion for STS which was articulated in the January 16, 1981 promulgation (See 46 FR 4144). The criterion must be sensitive enough to identify meaningful changes in hearing level so that follow-up procedures can be implemented to prevent further deterioration of hearing but must not be so sensitive as to pick up spurious shifts (sometimes referred to as "false positives"). In other words, the criterion selected must be outside the range of audiometric error. Thus, while the ultimate goal of the hearing conservation amendment is to identify and retard hearing loss, this cannot be done effectively if many workers are falsely identified as having threshold shifts when they do not. Falsely or incorrectly identifying large numbers of workers for follow-up procedures is not only costly and unnecessary but as Jack Shampan of Impact Hearing Conservation, Inc. pointed out, large numbers of incorrect identifications will cause both labor and management to lose confidence in their hearing conservation program (Exh. 375, pp. 24–25). Therefore the definition of STS must reflect a careful balancing between these competing considerations.

More than 40 different definitions of STS were recommended to OSHA by various individuals, groups, and organizations in the comments received subsequent to the publication of the January amendment. The most important of these are discussed below.

The definition of STS included in OSHA's Field Operations Manual was recommeded by several commenters (Exh. 327–98, p. 12; Exh. 327–108, p. 9; Exh. 327–62, pp. 6–7; Exh. 327–79, p. 3; Exh. 327–88, p. 8); this defines STS as a change of 20 dB at any test frequency in either ear. These participants argued that adopting any other STS definition would make comparing past and future test results difficult (Exh. 327–108, p. 9) and further that the 20 dB criterion was "straight-forward, easy to use, and does not require complex comparisons from computer programs to assure compliance" (Exh. 327–98, p. 12). OSHA agrees that a single-frequency criterion is simple to use and understand. However, J. L. McGuire [Acoustical Research Associates] argued that, "* * * employing a STS of 20 dB or greater for all employees does not protect the worker effectively" (Exh. 327–115, p. 2).

Both McGuire and J. Ropes of the Environmental Protection Agency (Exh. 327–94, p. 7) believe that a 20 dB criterion is too lenient because it allows too great a threshold shift to occur at individual frequencies before protective action is taken. Further, Drs. Larry and Julia Royster believe (Exh. 327–84, p. 170) that "Use of a 20 dB shift * * * would fail to protect female populations * * *."

OSHA agrees with these and other participants that the 20 dB at any frequency criterion will not provide necessary employee protection, since this definition of STS would permit an employee with a shift as great as 19 dB across the entire test frequency range to go untreated. In addition, OSHA does not find merit to the argument that using any but the 20 dB criterion will make pre-and post-amendment test comparisons difficult, since the audiogram itself, which is the record of actual hearing acuity, is not affected by the choice of definition and can be interpreted according to any definition.

Several organizations and agencies, including the Environmental Protection Agency (Exh. 327–94, p. 4), the United Steelworkers of America (Tr. Vol. III, p. 129, March 25, 1982, the Amalgamated Clothing and Textile Workers Union (Exh. 362–H, p. 3), and the International Union of Electrical, Radio, and Machine Workers (Exh. 331–17, p. 9), have recommended that OSHA adopt the following definition of STS: a 15 dB shift at any frequency other than 500 Hz in either ear relative to the baseline audiogram, adjusted for presbycusis. Many commenters praised the simplicity of this definition (Exh. 327–68, p. 7; Exh. 327–94, p. 4; Exh. 331–17, p. 9) and argued that it is more protective than a single frequency 20 dB criterion (Exh.. 327–94, p. 7; Exh. 331–17, p. 9); follow-up procedures are provided at an earlier point in time. Although the 15 dB at any frequency (other than 500 Hz) criterion has the advantage of simplicity, OSHA has not adopted it because it is not appropriate. The Agency believes that use of this definition would produce an unacceptable number of false positive identifications. Clearly more false positive identifications than the 20 dB criterion would result because the amount of shift required to identify employees and implement follow-up procedures is smaller.

[25] As noted earlier, OSHA has decided to use the term standard threshold shift rather than significant threshold shift in the final version of the hearing conservation amendment.

Although the Royster's report, "Comparing the Effectiveness of STS Criteria for Industrial Hearing Conservation Programs," found that the 15 dB criterion had the most appropriate identification rate and the lowest false positive rate, the Royster's criteria was not the same as that recommended by the commenters. The Royster's criterion required that the 15 dB shift occur on two successive audiometric tests rather than on just one (see Exh. 378, pp. 1–2). This criterion would mean that employees would not receive appropriate follow-up attention after their annual audiograms showed STS until a subsequent audiogram confirmed the initial STS. Since the audiometric testing is only required annually, in some cases this could result in the delay of follow-up procedures for as long as three or more years (Exh. 387, pp. 3–10). OSHA does not believe that this criterion adequately protects the employee. When the Roysters evaluated the effectiveness of a 15 dB shift once (as opposed to twice) at the appropriate test frequencies, they came up with a very high percentage of false positives and a relatively low percentage of appropriate identifications (Exh. 366, pp. 53, 63). It is clear therefore that using a 15 dB shift (once) will not be as effective as other criteria in effectuating the purposes of the hearing conservation amendment.

A number of commenters (Exh. 327–91–D, p. 5; Exh. 327–20, p. 5; Exh. 327–96, p. 4) advocated multi-level definitions, which specify different shifts at different frequencies. These definitions usually are relatively stringent for the lower frequencies and more lenient for the higher frequencies (see Exh. 327–96, p. 4; Exh. 327–98, pp. 12–13; and Exh. 327–122, p. 7). For example DuPont, the American Textile Manufacturers Institute and the American Paper Institute, recommended that OSHA adopt the National Institute for Occupational Safety and Health (NIOSH) definition of STS (Exh. 372–91; Exh. 327, p. 148; Exh. 327–20, p. 5). The NIOSH criterion is a 10 dB or greater shift at 500, 1000, or 2000 Hz, a 15 dB shift at 3000 Hz, and a 20 dB shift at 4000 or 6000 Hz in either ear relative to the baseline audiogram. Julia Phillips, speaking for the DuPont Company, asserted that this criterion is reasonable and will permit employers to distinguish between an STS caused by presbycusis and one caused by occupational exposure (Exh. 327–91–D, pp. 4–5). However, J. Ropes of the Environmental Protection Agency's Office of Noise Control Programs stated that a STS criterion using multiple level and frequency measurements, i.e., different thresholds at different frequencies, does not provide any additional diagnostic information and may interfere with early detection of hearing loss (Exh. 327–94, p. 7). Moreover such a definition which targets different amounts of hearing loss at different frequencies is somewhat complicated by its very nature.

Many commenters advocated that OSHA adopt a simple to understand and easy to use definition. For example, D. C. Gasaway, an An Air Force hearing specialist with many years of experience, advised that "* * * [the method selected] by OSHA [should] be a simple, uncomplicated, numeric method that can be easily understood and used by those who will actually conduct the task" (Exh. 327–66, p. 65). OSHA believes that a definition of STS that specifies different hearing thresholds for different frequencies may be too complex and therefore will be subject to error in field and industrial use. In addition, many commenters have pointed out that any formula specifying a shift of only 10 dB in individual frequencies will be very likely to produce false positive identifications (Exh. 327–151 and 327–152, p. 10; Exh. 327–62, p. 7; Exh. 327–98, p. 12). Therefore, OSHA has decided not to adopt the NIOSH definition described above.

A large number of companies and organizations, including the Chemical Manufacturers Association (Exh. 326–54, p. 2), the Dow Chemical Company (Exh. 327–76, p. 2), and the Monsanto Company (Exh. 326–49, p. 3) urged OSHA to define STS in accordance with "the American Academy of Otolaryngology's (AAO) definition." These participants mistakenly believed that the AAO's STS criterion was: a shift of more than 15 dB at 500, 1000, or 2000 Hz, more than 20 dB at 3000 Hz, or more than 30 dB at 4000 or 6000 Hz (Exh. 326–54; Exh. 327–76; Exh. 326–49). However, the AAO's successor organization, the American Council of Otolaryngology, emphatically states (Exh. 327–151) that this criterion is intended to be used only for otologic referrals; it is not suitable for use as an STS criterion to trigger hearing conservation program follow-up procedures. According to the Council (Exh. 327–151, p. 4), "[This criterion] * * * can be used to select those workers who are most likely to have *non-occupational hearing loss* for referral for otologic evaluation" [italics added]. Since OSHA is concerned in this amendment with occupationally induced rather than non-occupationally induced hearing loss, and is not specifically addressing other otologic disorders, adoption of this criterion would be inappropriate for the purposes of the hearing conservation amendment.

The three STS criteria specifically considered above (that is: 20 dB any frequency; 15 dB at any frequency from 1000 Hz to 6000 Hz; and the NIOSH criteria) and the OSHA January 16, 1981, criterion have a common feature. All indicate that a STS has occurred when a hearing loss exceeds a certain value as measured at a single frequency. Although the specifications differ for each definition, all have the characteristic of having a high false positive rate. This is caused, in part, by intrinsic variation of the audiometric testing instrumentation. As a result, a large hearing loss might be measured at only one frequency which would, by the nature of the STS criterion, give the illusion that an STS has occurred. If the audiogram is taken again, the hearing loss measured at that frequency may not be as large as previously measured, and therefore no real STS has occured. The initial observation that an STS occurred was thus due only to the instrumentation and testing variability and the nature of the STS criterion.

OSHA believes that any definition that is triggered by a specified amount of hearing loss at a given frequency is more likely to produce false positives than a definition that averages hearing levels over a number of frequencies. For example, with the two single number criteria considered above (15 dB at any test frequency or 20 dB at any test frequency) as well as the different level for different frequency NIOSH definition, a testing error at any frequency would trigger the prescribed follow-up procedures regardless of how improbable the results appeared to be.[39] Even where a very lenient criteria such as 20 dB is used, the flaws of this method are apparent: the criteria itself is not sufficiently protective and the defined change at any single frequency can trigger follow-up procedures. This is not necessarily a theoretical problem. The American Council of Otolaryngology—Head and Neck Surgery (ACO) and the American Academy of Otolaryngology (AAO) reported that in a study of 260 aluminum and chemical workers, 19.6% of the test population had shifts of 20 dB or more, whereas nearly that many (16.15%) had changes toward better hearing (negative shifts) of 20 dB or more (Exh. 327–151 and Exh. 327–157, p. 13). The ACO concludes that this problem is due to the

[39] Audiograms showing large shifts at only one frequency might be considered questionable.

use of an STS definition that specifies "any frequency, either ear," and recommends that the definition of STS adopted require that hearing levels be averaged over several frequencies to avoid this problem (Exh. 327–151, pp. 12–14).

In addition, a number of commenters have testified that averaging shifts over adjacent frequencies minimizes normal test error (Exh. 327–150, pp. 1–2; Exh. 327–151, p. 10; Exh. 327–152, p. 10; Exh. 376A, p. 4). Acoustician W. Dixon Ward, on behalf of the American Iron and Steel Institute, argued "Any multiple frequency criterion has an advantage over a single frequency criterion because random errors will tend to cancel each other" (Tr. Vol. III, p. 225, March 25, 1982). The ACO–AAO reported that, even under clinical conditions, the probability of exceeding a testing error of 10 dB [30] at a single frequency could be as great as 56%, assuming that the measurement of all audiometric frequencies varied independently (Exh. 327–151 and 152, p. 10).[31] Test-retest variability would probably be even greater in industrial settings.

Dr. R. A. Dobie suggested using the following criteria for STS: a change for the worse of 10 dB or more in the pure-tone average at either 500, 1000, and 2000 Hz or at 3000, 4000 and 6000 Hz, in either ear (Exh. 327–152, p. 11). Using this definition, the technician takes 12 measurements (six frequencies, two ears), after which the average shift for the lower three frequencies (500, 1000, and 2000 Hz) is calculated, followed by the average shift for the three upper frequencies (3000, 4000, and 6000 Hz). If an average shift of 10 dB or more is detected for either the upper or the lower group of frequencies, the audiogram is deemed to demonstrate STS.

This definition appears to be protective and has several other advantages as well. According to Dr. Dobie, this STS definition is sensitive both to early noise-induced hearing loss and the later, more severe losses, as well as to other otologic conditions (Exh. 378, p. 1). In addition, the definition employs an averaging technique, which discourages false positive identifications and reduces the degree of testing error commonly associated with the use of a single level at any frequency definition.

On the other hand, this definition appears to have been articulated only recently and has been tested on only one industrial population in one study. Because relatively little information on Dr. Dobie's investigation has been submitted to the record, it is difficult to compare his results with those of the Roysters or other investigators. Moreover, the definition is relatively complicated, requiring a number of computations and comparisons and it may be difficult for people to understand and use. OSHA believes that any formula that is difficult may contribute to technician error and may ultimately result in a less effective hearing conservation program (cf Exh. 327–66, pp. 51–54). While one group, the American Academy of Otolaryngology and the American Council of Otolaryngology (AAO–ACO) has endorsed the definition, it is generally unknown to professionals involved in industrial hearing conservation and untried by professionals in the hearing conservation community. In view of these shortcomings and the fact that another acceptable definition of STS exists (see discussion below), OSHA has decided not to adopt this definition.[32]

OSHA has decided to adopt the following definition of STS: an average shift of 10 dB or more at 2000, 3000 and 4000 Hz relative to the baseline audiogram in either ear. This definition is similar to the definition originally proposed in 1974 (see 39 FR at 37775, October 24, 1974) [33] and meets all the criteria for an appropriate definition of STS. The formula is sensitive enough to give an early indication of noise-induced hearing loss because of the frequencies used. The importance of using 4000 Hz, which is generally considered to be one of the frequencies which is affected by noise earliest and most severely (see 46 FR at 4085), is clear. The hearing threshold level at 3,000 Hz tends to follow the level at 4,000 Hz fairly closely (46 FR 4088; Exh. 17, p. 12; Exh. 12, Appendix 10; and Exh. 327–94, p. 7) and is also severely affected by noise damage. Hearing loss at the 2,000 Hz frequency usually begins after the higher frequencies have been affected; because of this phenomenon, the 2,000 Hz frequency is an indicator of additional hearing loss in employees who have already lost some hearing. As noted previously (46 FR 4082), the 2,000 and 3,000 Hz frequencies are very important for the understanding of speech, and should therefore be included in any definition of threshold shift that will trigger follow-up procedures.

The OSHA STS definition is sufficiently restrictive to locate meaningful shifts in hearing yet not so stringent that it will result in the implementation of unnecessary follow-up procedures for numerous employees. In addition, the OSHA definition requires averaging hearing levels at adjacent frequencies which reduces the effect of testing errors at single frequencies (Tr. Vol. V. pp. 24–25, March 29, 1982).

The OSHA definition has a number of additional advantages. As noted above, many commenters urged OSHA to adopt a simple formula and praised the simplicity of the 2,000 and 3,000 and 4,000 Hz average criterion (Exh. 376A, p. 4; Exh. 327–13, p. 3; Tr. Vol. I–B, pp. 192 and 198, March 23, 1982; Exh. 349–1, p. 11; Exh. 327–142, p. 5).

Further, the average shift of 10 dB at 2,000, 3,000, and 4,000 Hz definition has been "field tested" by industrial audiologists and many industry groups (Exh. 376A, p. 3; Exh. 327–105, p. 6; Exh. 327–138, p. 6), and it has also been systematically compared to other STS formulas. In a large study of military and civilian Air Force employees, a number of definitions were tested and the 2,000, 3,000, and 4,000 Hz criterion identified a reasonable number of STS cases compared to the number tagged by other definitions (Exh. 329–50C, Tables 2–4). In addition, the Royster study was essentially favorable to the definition of STS which OSHA is adopting. The Royster study found that an STS of 10 dB or greater average at 2,000, 3,000, and 4,000 Hz produced the lowest annual percentage of unnecessary identifications of the various definitions evaluated. In addition, the Roysters found that the OSHA definition *appropriately* identified a higher

[30] The January amendment states that the range of audiometric error is ±5 dB. This value, that is ±5 dB, reflects the precision and accuracy of the audiometric instrumentation. Variability in audiograms also result from test subject response and slight procedural changes from one test to the next, which increases the variability greater than ±5 dB. OSHA recognizes that false positives are caused by this variability as well as real, but temporary, changes in hearing levels (generally referred to as a temporary threshold shift).

[31] Dr. Ward cited a study by Berger, Royster and Thomas (Exh. 266A) in which the use of the 2,000, 3,000 and 4,000 Hz criterion rather than the single-number 20 dB criterion reduced the percentages of workers whom he judged "incorrectly" identified as having STS by more than half (Tr. Vol. III, p. 225, March 25, 1982).

[32] Several commenters have noted (Exh. 331–40; pp. 4–5; Exh. 327–66 pp. 60–65) that the 6000 Hz frequency is particularly susceptible to test variability. OSHA believes that averaging hearing levels at 3000 Hz, 4000 Hz and 6000 Hz in this definition will reduce the impact of the 6000 Hz test variability, but does not know the magnitude of the effect. This issue was not addressed at the hearing. OSHA believes that adopting an STS definition that contains the 6000 Hz frequency involves unnecessary speculation regarding the number of resulting false positives.

[33] In 1974 OSHA proposed that STS should be defined as an average shift of more than 10 dB at 2000, 3000 and 4000 Hz in either ear, relative to the baseline audiogram.

percentage of employees suffering STS than most of the other definitions studied (Exh. 366, pp. 61–62).[34] Because of its concentration on the frequencies that are the earliest or the most severely affected by noise, the resulting high degree of appropriate identifications for follow-up and the simplicity of the definition, OSHA believes that the definition of STS which it is adopting today will contribute more to the effectiveness of hearing conservation programs than any other definition considered.

The definition that OSHA has decided to adopt, that is, an average change in hearing level of 10 dB or greater at 2,000, 3,000, and 4,000 Hz is a slight change from the STS definition proposed in 1974 which included average shifts *greater than* 10 dB at these same frequencies. This change is in recognition of the fact that the definition as originally proposed was not sufficiently protective of employee hearing in all circumstances. (See, e.g. Exh. 9, pp. 37, 41, 51; Exh. 5, p. 43802; Exh. 51, pp. 10–11; Exh. 80, p. 2; Exh. 82, attach. 1, p. 2). There are some instances where large shifts in hearing level could occur in the highest test frequencies (4,000 and 6,000 Hz), with little or no change in hearing level occurring in the middle frequencies. While shifts of this magnitude are not common, they may occur in noise-sensitive individuals especially in the early stages of noise-induced hearing loss. Under the 1974 proposed definition, individuals suffering shifts as large as 30 dB at 4,000 Hz would not be identified provided that hearing thresholds at the lower frequencies had not shifted. Such individuals should be identified so that protective action can be taken. The change in the STS definition will allow for earlier identification of individuals at risk and earlier intervention in the process of hearing deterioration for these individuals.[35]

In addition to the fact that the OSHA STS criteria is more protective than that originally proposed, this change will clarify the Agency's intention and will help avoid some of the confusion suffered in the past between self-recording and manual audiometers (see 46 FR 42628, 42629, August 21, 1981).

The definition of STS contained in the January amendment is being revoked. Further evaluation of the record has convinced the Agency that the original definition was too complex to be workable especially in view of the extremely diverse workplaces and working populations covered by the amendment.

While some may feel that even the changed definition is not protective enough because under certain circumstances a shift of up to 25 dB could go untreated, OSHA believes that the definition of STS which it is adopting is as protective of the general population as the January, 1981 STS definition which was subject to the same flaws as all single frequency definitions. The ACO-AAO has labeled the single frequency criteria "equally vulnerable" and noted that:

> "If set at practical levels, e.g., 20 dB, they allow [to go undetected] broad shifts—up to 15 dB for the entire audiogram—which * * * are more common than isolated large shifts and are more significant both medically and in terms of communication handicap" Exh. 327–151, p. 14: Exh. 327–152, p. 14).

In many ways the new definition is a better definition than the original STS definition; it provides the necessary protection but is more cost effective in that is reduces the number of false positive identifications. Therefore, in view of all of the relevant factors, the new OSHA definition of STS is the most appropriate and consistent with the purposes of the hearing conservation amendment.

The standard requires that audiograms include as a minimum measurements taken at 500, 1000, 2000, 3000, 4000 and 6000 Hz. while the STS criterion only uses the 2000, 3000, and 4000 Hz frequencies, OSHA believes that requiring the measuring of these other frequencies adds other benefits justifying its inclusion in the standard. Testing at all frequencies is important to have a complete record of the employee's hearing ability and may be invaluable to the audiologist or physician upon referral.

Failure to do so might mean that medical problems that could easily be treated might be ignored.[36] OSHA believes that testing these frequencies constitutes good industrial hygiene and medical practice. Moreover, testing at frequencies other than those specified in the STS criteria will impose minimal burden the employer.

Aging

OSHA has also decided, after careful consideration of the data in the record, to permit employers to interpret audiograms using a presbycusis or aging correction before determining whether an STS has occurred. Many commenters (Exh. 327–106; Exh. 327–105; Exh. 327–103; Exh. 327–100; Exh. 327–101; Exh. 327–94; Exh. 327–147) urged the Agency to allow presbycusis correction factors to be used. A substantial number of comments recommended the use of an age correction, many stating that hearing loss can occur from aging, non-occupational noise, and other factors, and such hearing loss should not be considered part of a significant threshold shift within the context of the OSHA standard (Exh. 14–110, p. 2: Exh. 14–150, p. 2: Exh. 14–160, p. 2: Exh. 14–188, p. 1: Exh. 14–200, p. 1: Exh. 14–215, p. 3: Exh. 14–248, p. 3.

The NIOSH criteria document (Exh. 1, pp. 1–14 to 1–17, III–6) recommended adjusting the baseline audiogram for hearing loss that occurs naturally due to the aging process. The adjusted baseline could then be subtracted from the most recent annual audiogram in order to determine whether or not an STS had occurred. If employers wish to correct for aging, the amendment directs them to make the adjustment to the annual audiogram rather than to the baseline, so that the baseline will not be changed by mistake. The NIOSH presbycusis values are similar to those of other well known presbycusis data bases. Although there may be slight variations at individual frequencies, the NIOSH values are generally consistent with other presbycusis data such as the U.S. Public Health Service data, and those used by Robinson and Burns, and by Passchier-Vermeer (found in "Derivation of Presbycusis and Noise Induced Permanent Threshold Shift (NIPTS) To Be Used for the Basis of a Standard on the Effects of Noise on Hearing", (Exh. 310, p. 31)). When applying an age correction, the most recent audiogram is corrected according to the procedures outlined in Appendix F. In the appendix, OSHA has adopted the procedures and the age correction tables used by NIOSH in the criteria document (Exh. 1, pp. 1–14 to 1–17).

OSHA believes that these correction factors will aid in distinguishing between occupationally induced and age-induced hearing loss. This is particularly important because the pattern of hearing loss due to aging closely resembles that of noise-induced hearing loss. Therefore, although the Agency agrees with D. C. Gasaway that

[34] The only criteria that fared better was 15 dB twice.

[35] In addition, it should be noted that both the Air Force and the Roysters used the OSHA definition rather than the proposed criteria to analyze their data (Exh. 329–50B, Exh. 329–50C; Exh. 366). Therefore the change is consistent with the findings of these studies.

[36] Further, some employers may choose to use the American Academy of Otolaryngology's otologic referral definition, in addition to this standard's definition of STS, to provide employee protection against medically caused hearing loss. Since the amendment still requires testing at all the usual test frequencies, employers will have little difficulty applying this definition.

requiring the use of a correction factor may complicate calculation procedures (Exh. 327–667, pp. 66–67) and cause some errors, we believe that professional supervision of the hearing conservation program will ensure that audiometric technicians understand how to use the age-correction chart, included in Appendix F of this revised amendment. Further, since the use of presbycusis factors is discretionary, employers are free to use OSHA's STS criterion without a correction for the effects of age. The Agency believes that allowing the consideration of the contribution of aging to hearing loss is both reasonable and appropriate and will allow the employer to discern how well the hearing conservation program is working by determining the amount of hearing loss attributable primarily to aging. Therefore, the stay on Appendix F is being lifted.

Determination of Work Relatedness

The January amendment required that the professional reviewing employee audiograms determine whether any significant threshold shifts detected were caused by occupational noise exposure. The preamble explained that under most circumstances the professional supervising the hearing conservation program would refer the employee for medical evaluation to ascertain whether the hearing loss was work related, unless the employer was willing to record the hearing loss as such on the OSHA Form 200, Log of Occupational Illnesses and Injuries (see 46 FR 4146). the preamble stated that in most cases, occupational hearing loss constituted the major component of a worker's hearing loss, because the average person generally spends more time at work than in recreational activities that may also cause hearing loss, such as hunting.

The August document continued the administrative stay on this requirement pending review of the many comments objecting to this provision. Commenters stated that in some cases it is very difficult, even for an audiologist or otolaryngologist, to determine the cause, or work relatedness, of a significant threshold shift because of the similarity between an occupational and nonoccupational audiometric hearing loss configuration on the audiogram (Exh. 325–130; Exh. 325–239; Exh. 325–248; Exh. 325–96). Specifically, the Agency stayed the paragraphs requiring determination of the work-relatedness or cause of a significant threshold shift, and the paragraph requiring employers to record the existence of a significant threshold shift on the OSHA Form 200 when the professional reviewer determines that the shift is work related. OSHA asked for comments and information regarding the necessity of determining the cause of a significant threshold shift to protect a worker's hearing and on methods for distinguishing between occupational and non-occupational hearing loss.

A number of participants claimed that this requirement would not offer additional protection to workers and that determining causality is irrelevant to the effectiveness of the hearing conservation program (Exh. 327–79, p. 2; Exh. 327–90, pp. 4–5; Exh. 327–104, p. 13, Exh. 327–120, p. 3).

> "In any case, it is not necessary to determine the cause of a significant threshold shift in order to take the necessary steps to protect a worker's hearing. When significant hearing loss is discovered, regardless of the source, the employee should be informed and counseled regarding the effects of noisy activities both on and off the job. Ear protectors should be fitted and the employee trained in their use and care. If ear protectors are currently in use, they should be checked for fit and attenuation" (Exh. 327–108, p. 8).

Others agreed with this position (Exh. 327–141, p. 4; Tr. Vol. II, p. 109, March 24, 1982; Exh. 327–143, p. 5).

OSHA does not regard the determination of STS causality as central to the effectiveness of the hearing conservation program. STS is a means of identifying a change in hearing that triggers certain follow-up actions to prevent further change. Once STS is found, the same actions are required, whether or not the STS is work related. The determination of causality, therefore, does not enhance hearing protection as far as the hearing conservation program is concerned. (See generally the discussion of this issue in 46 FR 4146.) Therefore, the requirement to determine the causality of the STS is being revoked. In addition, OSHA has determined that the paragraph directing employers to record STS's on the OSHA Form 200 is unnecessary. Employers are already required pursuant to 29 CFR 1904.2 to record work related injuries and illnesses on the OSHA Form 200. Since this reiteration of the employer's obligation is duplicative, the requirement as stated in the hearing conservation amendment is hereby revoked.

Retest Audiogram

The January amendment required employers to provide employees with a retest audiogram within 60 days if the annual audiogram showed that the employee had a significant threshold shift (STS). The preamble explained that the purpose of the retest was to determine whether the significant threshold shift was permanent (46 FR 4144). In August, the stay of the retest requirement was continued in response to comments concerned with the difficulty of determining the permanency of an STS (Exh. 325–57, p. 26). In addition, many persons objected to the shortness of the time period for the retest, asserting that the definition of STS contained in the January amendment resulted in many persons being falsely identified as having an STS, thereby requiring more retesting than necessary (Exh. 325–48, p. 4; Exh. 325–57, p. 2). Moreover, it was claimed that retesting was burdensome for those employers using the services of a mobile test van (Exh. 325–130, p. 2).

OSHA also requested information on whether retesting within a short period of time to confirm the presence of a STS was necessary to protect employee hearing and, if retesting was necessary, whether it was appropriate to require retesting within 60 days. OSHA received many comments in response to this request for information. Several commenters stated that a retest audiogram and the interval to perform any retest audiogram should be left to the discretion of the professional supervising the hearing conservation program and should not be firmly fixed by the standard (Exh. 327–101, p. 6; Exh. 327–154, p. 6; Exh. 327–141, p. 4; Exh. 329–22, p. 5; Exh. 326–15, p. 7; Exh. 327–20, p. 5; Exh. 327–121, p. 3; Exh. 327–98, p. 14). Dr. S. White of the American Speech-Language-Hearing Association explained that he favored this more flexible approach because it was not possible to determine whether the STS was permanent on the basis of a test performed in an industrial setting by a technician. According to Dr. White, such a determination could only be made after a diagnostic evaluation had been performed in a clinical setting. For these reasons, Dr. White recommended that professionals in charge of the program be allowed to decide, on a case-by-case basis, whether a retest or referral was appropriate (Exh. 327–154, p. 6; Tr. Vol. IV, p. 46, March 26, 1982).

Richard Crewdson [Industrial Health, Inc.] also observed that:

> "* * * the majority of shifts found in this way are artifacts * * * caused by the normal inaccuracies inherent in audiometric testing * * * the supervisor [should] determine the necessity to retest" (Exh. 327–83, p. 3).

Other commenters claimed that it was not necessary to perform a retest or to determine whether an STS is permanent since simply identifying an STS triggers protective action (Exh. 327–28; Exh. 327–61; Exh. 327–62). In addition, the costs

and complications of scheduling retest audiograms, especially for employers who contract their audiometric work out to mobile van services or whose firms are located in remote areas, were emphasized by several commenters (Exh. 327–146, pp. 5–6; Exh. 327–120, p. 3; Exh. 329–22, pp. 4–5).

Despite these considerations, however, representatives of several companies reported they would perform a retest audiogram after an STS was identified even if such a requirement was not mandatory. In fact, J. Stenmark of the American Iron and Steel Institute asserted that employers will usually elect to retest because in many cases the shift will be caused by subjective problems or testing artifacts (Exh. 327–105, p. 5). Dr. McCurdy of the American Council of Otolaryngology thought that retesting would reduce the costs of the hearing conservation program by eliminating the need for further preventive action if the retest showed that the shift was not persistent (Exh. 327–151, p. 7). In a similar vein, a number of commenters suggested that retesting reduces the number of unnecessary referrals (Exh. 327–57, p. 2; Exh. 329–8, p. 2; Exh. 327–12, p. 3; Exh. 327–135, p. 5; Exh. 329–14, p. 6; Exh. 327–68, p. 5; Exh. 326–21, p. 3; Exh. 327–66, pp. 34–43). Richard Boggs of Organization Resources Counselors and H. M. Williams of the American Telephone and Telegraph Company also believed that most employers would wish to retest to avoid unnecessary referral fees (Exh. 327–98, p. 14; Exh. 327–89, p. 5).

Several participants indicated that although they felt a retest was necessary, OSHA should allow employers more time to conduct retests, especially if mobile van test services were used (Exh. 327–20; Exh. 327–84A). A few commenters suggested that the retest interval, rather than the decision to retest, should be determined by the professional supervising the program, and others recommended that a flexible time period be permitted for employers using mobile vans to obtain retest audiograms (Exh. 327–139, p. 7; Exh. 327–138, p. 5; Exh. 327–142, p. 4; Exh. 327–140, p. 4; Exh. 327–106, p. 5; Exh. 327–103, p. 5; Exh. 327–80, p. 5; Exh. 327–91, p. 27).

After careful consideration of the evidence in the record, OSHA has concluded that it is not necessary to require employers to conduct retest audiograms. Deleting the retest requirements from the hearing conservation amendment would not in any way diminish employee protection. However, a number of participants indicated that they wished to conduct retest audiograms to validate the results of earlier audiograms showing STS and did not wish to implement follow-up procedures until this had been accomplished. The stay of the retest provisions had the effect of disallowing this approach in many cases because of time constraints. OSHA has decided to amend the retest provisions to allow but not require a retest within 30 days where the annual audiogram shows that an employee has suffered a standard threshold shift. An employer wishing to retest under these conditions may consider the retest audiogram as the annual audiogram. Therefore, if a valid retest audiogram does not show that the employee has suffered a STS, no follow-up procedures need be implemented. This change will permit employers and the professionals who direct their hearing conservation programs to decide, on a case-by-case basis, whether a retest audiogram is necessary or desirable.

In response to comments received after publication of the January amendment, the stay of the word "permanent" before the phrase "significant threshold shift" in the follow-up procedures section of the audiometric testing provisions was continued in the August document.[37] Some commenters have argued that making the distinction between permanent and temporary threshold shifts is irrelevant in relation to a hearing conservation program in that the employer should provide protection as soon as *any* STS is discovered. (Tr. Vol. I–B, pp. 212–213, March 23, 1982; Tr. Vol. II, pp. 108–109, March 24, 1982). This would be true of course in the absence of a retest. OSHA believes that labeling the STS as permanent is not important in this context and may even be misleading. The term "permanent" implies that shifts identified on successive audiograms are *never* subsequently determined to be temporary. There is ample evidence in the record to indicate the variability of audiometric test results (Exh. 327–12, p. 3; 327–19, p. 2), and thus the artifactual nature of many threshold shifts. The word "permanent" as it relates to the term "STS" has therefore been deleted. Accordingly, an STS subsequently confirmed by another audiogram is termed "persistent" rather than "permanent" in the revised amendment.

Follow-up Procedures

The January amendment permitted employees initially identified as having STS to discontinue the wearing of hearing protectors if retesting showed that the STS was not permanent, unless such employees were required to wear hearing protectors anyway because they were exposed over the permissible exposure level, a TWA of 90 dB. Since the retest requirement of the January amendment has been revoked, the language of the paragraph [38] has been amended to be consistent with these revisions, and the provision now reads "subsequent tests" rather than "retesting." The provision would not permit employees exposed to an 8-hour TWA of less than 90 dB to discontinue the use of hearing protectors "if *subsequent audiometric testing* of an employee * * * indicates that the standard threshold shift is not *persistent* * * * " (emphasis added).

Revised Baseline Audiograms.

The January amendment [39] required revision of the baseline audiogram when a subsequent audiogram revealed an improved hearing threshold at two or more test frequencies with respect to the baseline audiogram or when a subsequent audiogram revealed a permanent significant threshold shift. In either case, the baseline was revised by substituting the annual or retest audiogram for the original baseline audiogram. In the case of an improved hearing threshold, the preamble explained that the revised baseline would more closely resemble the employee's actual non-noise exposed baseline. Revising the baseline after an STS had been identified would prevent the same STS from being identified repeatedly for the same employee.

After publication of the January amendment, the Agency received requests for clarification of the amount of improvement in thresholds needed to

[37] As originally promulgated, paragraph (j)(8)(iv)(*a*) and (*b*) read:

(iv) If a significant threshold shift has been determined to be *permanent* on the basis of a retest audiogram or an annual audiogram conducted after 14 hours without exposure to workplace noise, the employer shall:

(*a*) Inform the employee in writing, within 21 days of the determination, of the existence of a *permanent* significant threshold shift;

(*b*) Refer the employee for a clinical audiological evaluation or an otological examination, as appropriate, if additional testing is necessary to determine the cause of the *permanent* significant threshold shift, or if the employer suspects that a medical pathology of the ear (as defined in Appendix I) is caused or aggravated by the wearing of hearing protectors. [Italics added]

[38] As originally promulgated, paragraph (j)(8)(iii) read: If *retesting* of an employee reveals that the significant threshold shift is not *permanent*, the use of hearing protectors by that employee may be discontinued, unless the employee is required to wear hearing protectors pursuant to paragraph (b)(1) of this secton. (Italics added)

[39] 29 CFR 1910.95(j)(9) (i) and (ii), 46 FR at 4163.

trigger a revision of the baseline and methods of handling the situation in which an annual audiogram shows improvement at some frequencies and losses at others. To consider these comments, the Agency continued to stay on this requirement in the August Federal Register document.

OSHA received a variety of comments and opinions on revising the baseline following the continuation of the interim stay. Many comments supported the January amendment's requirement to revise baselines when improved thresholds or an STS occurs (Exh. 329–14, p. 6; Exh. 327–154, p. 6; Exh. 327–142, p. 4; Exh. 327–139, p. 7; Exh. 327–138, p. 5; Exh. 327–119, p. 3; Exh. 327–105, p. 6; Exh. 327–101, p. 6; Exh. 327–102, p. 10; Exh. 327–103, p. 6; Exh. 327–98, p. 14; Exh. 327–94, p. 8; Exh. 327–89, p. 6; Exh. 327–53, p. 2; Exh. 326–21, p. 3; Exh. 327–84, p. 27). These commenters stated that if the baseline were not allowed to be revised when an STS occurs, the employee would be classified as having an STS on each subsequent audiogram, and the employer would repeatedly be required to institute follow-up measures. Dr. S. White of the American Speech-Language-Hearing Association maintained that baseline revision is essential for accurate audiogram comparison. He recommended that the original baseline be revised after a significant threshold shift when two successive annual tests confirm a change in hearing, either for better or worse (Exh. 327–154, p. 6). Other commenters also supported revising the baseline but favored different criteria for determining an improved hearing threshold (Exh. 327–119, p. 3; Exh. 327–115, p. 3; Exh. 327–105, p. 6; Exh. 327–102, p. 10; Exh. 327–98, p. 14; Exh. 327–35, p. 4; Exh. 327–29, p. 2; Exh. 327–84, p. 25; Exh. 327–142, p. 4; Exh. 327–139, p. 7; Exh. 327–138, p. 5). For example, some participants defined improvements as a shift for the better of 10 dB or more beyond any test-retest error. J. Morrill of Impact Hearing Conservation, Inc., believed that revising the baseline when STS occurs is only appropriate if a sliding scale STS criteria, such as that included in the January amendment, is used (Exh. 327–35, p. 4).

J. Shampan of Impact Hearing Conservation, Inc., reported at the OSHA hearing that his company intends to retest before revising the baseline to eliminate the problem of revising the baseline on the basis of a temporary threshold shift (Tr. Vol. V, p. 52, March 29, 1982). Other commenters supported revising the baseline only on the basis of a confirmed STS or a permanent threshold shift, implying that the baseline should not be revised if a retest audiogram had not been performed (Exh. 327–98, p. 14; Exh. 327–103, p. 6; Exh. 327–139, p. 7).

Some commenters advocated revising baselines only when subsequent audiograms showed improved thresholds (Exh. 327–135, p. 6; Exh. 327–95, p. 8). Dr. W. G. Thomas of the North Carolina Memorial Hospital stated that employee hearing thresholds could improve by as much as 20 to 40 dB after the initiation of a hearing conservation program. Dr. Thomas stressed the importance of revising the baseline to reflect such an improved threshold because otherwise the initial baseline would be contaminated by temporary threshold shift, which would render any comparison of audiograms meaningless (Exh. 329–26, p. 2). D. C. Gasaway, a hearing conservation specialist, discussed the results of an Air Force study which had led him to conclude that:

"* * * negative [improved] threshold values greater than 10 dB (i.e., 15 dB or more) at 500 Hz and/or 6000 Hz should be used to require re-establishment of reference audiograms and/or negative differences of 10 dB or more at 1000 through 4000 Hz. This approach would be simplified further if only the differences (negative) at only 1000 through 4000 Hz, either ear, were used. If adopted, then negative values of threshold shift would * * * [be] equal to, or exceeding, 10 dB at two or more frequencies between 1000 and 4000 Hz, either ear. Under these conditions the reference audiogram should be re-established. Of course, the re-established reference should be accomplished only after the individual has been free from noise a minimum period of time * * *" (Exh. 327–66, pp. 46–47).

Other commenters stated that the baseline should be revised only when a significant threshold shift occurs and not when an improvement in hearing has occurred. These participants believed that revising the baseline when hearing improved would cause confusion, and require the use of a computer to track employee baselines (Exh. 329–18, pp. 6–7; Exh. 329–16, pp. 7–8).

Two commenters suggested that OSHA should require revised baselines for audiograms showing STS, but that a professional should decide whether to revise them after an improvement in hearing had occurred. D. McCurdy of the American Council of Otolaryngology explained that after a permanent significant threshold shift occurs it is no longer suitable to compare subsequent audiograms to the initial baseline since even if no further change occurred the reviewer would repeatedly identify the same shift. However, with regard to improved thresholds, he felt that the decision to revise the baseline should be left to the discretion of the supervising professional since many variables, such as results of otologic referral, instrument calibration, and the test environment, must be considered. Dr. McCurdy also criticized the criterion for improved thresholds in the January amendment because he felt that a majority of audiograms would meet this criterion without showing a consistent change in hearing across different frequencies (Exh. 327–151, pp. 8–9). Dr. S. White of the American Speech-Language-Hearing Association also recommended that the professional determine the revision criteria for improved thresholds (Tr. Vol. IV, p. 72, March 26, 1982).

A number of other commenters also believed that the professional should be the one to decide whether it is necessary to revise the baseline either for STS or improved thresholds (Exh. 329–22, p. 5; Exh. 329–15, p. 6; Exh. 327–143, p. 6; Exh. 327–91, p. 29; Exh. 327–76, p. 10; Exh. 327–20, p. 5).

A few commenters objected to permitting any revision of the baseline at all (Exh. 327–120, p. 3; Exh. 327–108, p. 9; Exh. 327–106, p. 5; Exh. 327–71, p. 3; Exh. 327–69, p. 7; Tr. Vol. I–B, p. 244, March 23, 1982). Many felt that revisions will lead to confusion and tampering with audiometric records, and will not contribute to the overall hearing conservation program (Exh. 327–120, p. 3; Exh. 327–108). Some reasoned that the annual audiogram should be compared to the baseline as well as to any subsequent audiogram rather than revising the baseline (Exh. 327–71, p. 3) and another commenter recommended that noting the date of the change would be sufficent (Exh. 327–69, p. 7).

In light of the evidence in the record, OSHA has decided that an annual audiogram may be substituted for the baseline audiogram if the professional supervising the program determines that the employee has experienced a persistent STS or has shown a significant improvement in hearing acuity. The Agency agrees with the view expressed by Robert Connelly, an industrial audiologist with Audiometric Associates:

"Revising the baseline test would provide an effective means of monitoring hearing levels over time" (Exh. 327–119, p. 3).

In addition, OSHA agrees with Dr. McCurdy of the American Council of Otolaryngology (Exh. 327–151) and Richard Klinzing of the American Paper Institute (Exh. 329–22, p. 6), among others, that the professional supervising the employer's hearing conservation program can best determine when an annual audiogram should be substituted

for the baseline audiogram. For these reasons, the mandatory requirements in the January amendment concerning revision of the baseline audiogram have been restated in non-mandatory performance language. In addition, it should be noted that all audiograms must be retained for the length of employment of the affected employee. This revision of the provisions concerning revised baseline audiograms does not in any way permit the destruction of any original baseline audiograms.

Microprocessor Audiometers

The January amendment required audiometric tests to be conducted with equipment meeting the specifications of the American National Standard Specification for Audiometers, S3.6–1969. The preamble to the August Federal Register document (46 FR 42628) noted that although microprocessor audiometers were not specifically mentioned as acceptable instruments, they were allowed by the amendment if they meet the requirements of ANSI 3.6–1969. In August OSHA indicated it was considering adding language to the amendment explicitly permitting the use of this equipment. Two commenters, D. E. Rapp of Dow Chemical (Exh. 327–76) and H. T. Buelter of the American Center for Occupational Health (Exh. 329–95), requested that the Agency specifically permit the use of microprocessor audiometers in the revised amendment. OSHA agrees with these suggestions and is adding clarifying language to the provisions describing acceptable audiometric measuring instruments.

Background Levels in Audiometric Test Rooms

The January amendment required that, within two years, audiometric testing must be conducted in test rooms meeting the background sound pressure level specifications of Table D–1 in Appendix D. In the January amendment, Table D–1's specifications were essentially those of the American National Standard Institute's (ANSI) S3.1–1977 standard, except that the background sound pressure levels permitted at 500 Hz (27 dB) were higher than those of the ANSI standard (21.5 dB).

OSHA relaxed ANSI's requirement for a background sound pressure level of 21.5 dB at 500 Hz to 27 dB in response to data suggesting that this level could not be met at 500 Hz in industrial settings and that audiometric precision was not as important at 500 Hz as at other frequencies (see 46 FR 4148–4149). After publication of the January amendment, OSHA received comments stating that the sound pressure levels in Table D–1 are not necessary and are not feasible for industrial audiometric testing programs. For example, some comments indicated that double-walled rooms would have to be used to meet the permissible background sound pressure levels (46 FR at 42628). The stay of the requirement that employers meet the specifications of Table D–1 was continued in August 1981. In the interim, employers conducting audiometric examinations have been required to meet the less stringent background sound pressure level specifications of Table D–2.

Many comments submitted since the August publication have addressed the issue of whether Table D–1 or Table D–2 is the most appropriate for industrial audiometric testing. Background sound levels required by Table D–1 are essentially the same as those specified in the ANSI S3.1–1977 standards, while Table D–2 was adopted directly from the older ANSI S3.1–1960 standard.

There is widespread agreement that the audiometric testing requirements of this amendment describe "industrial audiometry" rather than "clinical audiometry." Industrial audiometry consists of obtaining actual air conduction thresholds at specified frequencies. Paragraph (h)(1) of the amendment requires, in part, that audiometric test examinations consist of pure tone, air conduction thresholds, with test frequencies including as a minimum 500, 1000, 2000, 3000, 4000 and 6000 Hz. Clinical audiometry, however, is comprehensive, and includes, as a minimum, air and bone conduction threshold measurements at each frequency for the purpose of diagnosis and rehabilitation. Since this amendment does not require audiological diagnosis but rather only requires employee referral for a clinical audiological evaluation or an otological examination, under certain special circumstances, the audiometric test program is not considered a clinical program. Richard L. Stepkin, an industrial audiologist and President of Enviromed Corporation, best describes the difference between clincial and industrial audiometric testing:

> "The best criteria for establishing differences between clinical and industrial audiometric test programs are by the types of tests performed. Industrial audiometric evaluations require only an air conducted threshold and nothing more. Clinical audiometry includes anything and everything beyond this process.
>
> It should be noted that industrial audiometric threshold testing is not to be confused with "screening" programs. A screening procedure is where the test is presented at one intensity level and it is an all or none response. Audiometric threshold testing requires the identification of threshold at the selective frequencies, as should be [done] in industry" (Exh. 327–56 p. 7).

Commenters who favored Table D–1 essentially paraphrased the rationale given in the January 16, 1981, preamble (46 FR 4148): background sound pressure levels in audiometric test rooms must be quiet enough to permit accurate threshold measurements (Exh. 327–62, p. 7; Exh. 327–137 B, p. 1; Exh. 331–17, p. 14; Exh. 376 A, p. 2; Tr. Vol. IV, pp. 143, 211, March 26, 1982; Tr. Vol. V, p. 22, March 29, 1982).

Dr. Francis I. Catlin [American Academy of Otolaryngology—Head and Neck Surgery] emphasized the Academy's concern. He asserted that the background sound pressure levels permitted by Table D–2 would result in a loss of ability to identify early hearing losses from hazardous noise exposures. At these levels, the hearing test program would only identify problems after employees have experienced significant hearing loss close to that of material impairment, or when the noise levels were high enough to produce temporary threshold shifts of more than 25 dB (Exh. 327–152, p. 19).

An overwhelming number of commenters recommended the use of Table D–2 rather than Table D–1, contending that Table D–2 is adequate for determining STS and for obtaining valid measurements (Exh. 327–112, p. 14; Exh. 327–122, p. 7; Exh. 327–149, p. 6; Exh. 329–17, p. 4). James T. McCallum, Corporation Audiologist at the Reynolds Metal Company and others asserted that the more stringent sound pressure levels of Table D–1 are necessary in a clinical setting for diagnostic purposes. (Tr. Vol. I–B, p. 264, March 23, 1982; Exh. 326–34, p. 3; Exh. 327–61, p. 4; Exh. 327–84, p. 32; Exh. 327–56, p. 7; Exh. 327–91, p. 36; Exh. 327–103, p. 7; Exh. 327–114, p. 26; Exh. 327–139, p. 8; Exh. 329–11, p. 4; Tr. Vol. I–B, p. 194, March 23, 1982). However, an industrial audiometric testing program which is intended merely for identification of persons susceptible to noise does not require such rigorous levels. Dr. S. White of the American Speech-Language-Hearing Association stated the following:

> Concerning the appendix to the audiometric test rooms, there is an express purpose for the allowable octave band sound pressure levels as recommended by the American National Standard for Permissible Ambient Noise during Audiometric Testing or ANSI S3.1 1977. That purpose is to ensure ability to achieve hearing threshold levels to zero decibels. These are the background levels required for hearing research and

accurate diagnostic measurement of absolute thresholds of people with normal hearing. A monitoring program does not need such rigorous levels.

Authorities cite a range of normal hearing and the levels presently permitted by OSHA as indicated in Table D–2 would allow measurement of hearing to well within the range of 0 to 25 decibels during threshold levels. Table D–1 levels should only be mandated if precise scientific measurement is to be accomplished with highly trained personnel and highly calibrated instrumentation (Tr. Vol. IV, pp. 49–50, March 26, 1982).

After thorough review and analysis of the comments in the record in connection with this issue, OSHA has determined that the background sound pressure levels specified in Table D–1 are not necessary for the purposes of the hearing conservation amendment. OSHA concurs with Dr. S. White and J. McCallum, and many others, that the intent of the audiometric testing program required by this amendment is to identify persons with hearing loss before the loss progresses to material impairment. The fact that the employer is not required to make a determination of work relatedness, and the fact that employees are advised to seek referral where a medical pathology is suspect, are evidence that "medical or audiological diagnosis" is beyond the scope of the audiometric test program.

The Agency reaffirms its position as stated in the preamble of January 16, 1981 (46 FR 4148) that background sound levels in audiometric test rooms must be quiet enough to permit valid measurements of audiometric thresholds. However, OSHA is now convinced that the levels of Table D–2 are sufficient for obtaining valid threshold measurements for purposes of industrial hearing conservation programs. Thus, OSHA no longer believes that the sound pressure levels specified in Table D–1 are necessary to achieve this goal. The comments submitted which reflect a variety of professional experiences have persuaded OSHA that the background levels in Table D–2 will ensure an adequate environment for audiometric testing. Ronald D. Poole, Director of the Audiology Clinic, Mankato State University, summarized the opinions of those who favor Table D–2:

"In the past 5–6 years I have seen the audiograms of literally hundreds of employees tested in rooms where the maximum allowable background noise conformed to that contained in Table D–2 and their thresholds were found to be well within that range of normal between 0—25 dB, and in most instances were even closer to those minimum (0 dB) than the maximum (25 dB). I do not feel any test accuracy or integrity will be sacrified by retaining those values presently acceptable in Table D–2 (Exh. 329–97, pp. 1 to 2)."

Therefore, Table D–1 of Appendix D, required by the January amendment is revoked. The background sound pressure levels for audiometric test rooms which are required by this amendment are contained in Table D of Appendix D.

Audiometer Calibration

The January promulgation of the hearing conservation amendment required that audiometers be given a functional check each day they are in use. This process involves a biological calibration and a listening check. This is done by testing a person with known, stable hearing thresholds and by listening to the audiometer's output to make sure it is free of disforted or unwanted sounds. Such sounds might lead to invalid audiograms.

When the biologic calibration resulted in "deviations of more than 5 dB" in hearing level from the subject's known audiogram, the January amendment required an acoustic calibration. An acoustic calibration is one in which the audiometer is checked with a sound level meter and earphone coupler to make sure the instrument is producing the correct level of pure tones at specific frequencies. Also included in the acoustic calibration is a linearity check to ensure that the sound pressure output is increasing at the proper increments.

The January amendment also stipulated that "deviations of more than 10 dB" on the sound pressure output check and linearity check triggered an exhaustive calibration. Exhaustive calibration involves a thorough instrument check and, where necessary, an adjustment to conform with requirements of the ANSI Standard Specification for Audiometers (S3.6–1969). The audiometer usually must be sent back to the manufacturer or to a laboratory for the exhaustive calibration because specialized equipment is needed to perform this calibration.

Commenters (Exh. 327–66, p. 68; Exh. 347–141, p. 5; Exh. 327–91; Exh. 349–1; Exh. 327–154) pointed out that since self-recording audiometers trace thresholds in 1 dB increments, "deviations of more than 5 dB" could be interpreted to mean that a 6 dB deviation would trigger an acoustic calibration. Similarly, "deviations of more than 10 dB" would imply that an employer using a self-recording audiometer would be required to send the audiometer back to the manufacturer or to a laboratory for an exhaustive calibration when only an 11 dB deviation was found. This would result in a much more stringent rule than the Agency intended. In promulgating the requirements detailed above, the Agency assumed that manual audiometers, which trace thresholds in 5 dB increments, were being used. It was intended that the trigger for an acoustic calibration be deviations of 10 dB and the trigger for an exhaustive calibration be deviations of 15 dB or more.[40]

The Agency's position on this issue was discussed in the August **Federal Register** document and an interpretation consistent with the above discussion was given (see 46 FR 42628–42629). After evaluating the comments on this issue, OSHA has decided to incorporate into the text of the amendment explicit language to clarify these points. The revised amendment therefore specifies that an acoustic calibration is necessary if the results of the biological calibration indicate "deviations of 10 dB or greater" and an exhaustive calibration is necessary when an acoustic calibration results in "deviations of 15 dB or greater."

Summary

The audiometric test provisions of this revised hearing conservation amendment are somewhat less detailed than those promulgated in January 1981, although they have not been simplified as much as the amendment's monitoring provisions. It was not possible to embrace the performance approach completely for the audiometric testing provisions. Based upon a thorough review of the information and comments in the record, OSHA believes that a certain degree of specificity in the audiometric test provisions is absolutely necessary to protect employees in the hearing conservation program adequately and to realize fully the benefits the Agency has predicted will occur as a result of such program (see Regulatory Analysis).

OSHA recognizes that employers may employ different professionals to supervise their audiometric test program from year to year. Moreover, the professional supervising the program may use any number of audiometric technicians to obtain the required audiograms. As a result, it is quite possible that there will be little continuity of personnel responsible for the program from year to year. It is crucial to ensure that certain basic elements of the program are performed in a relatively uniform manner so that the evaluation of audiometric test data

[40] These performance triggers were in addition to the stated frequency with which such calibrations must be done: at least yearly for acoustic calibration and every two years for exhaustive calibration. For a more complete discussion of audiometer calibration, see 46 FR 4149–4151.

and comparison of results are meaningful. Therefore, it was necessary to specify certain items, such as audiometric test frequencies, permissible background sound pressure levels in audiometric test booths, a definition of standard threshold shift, and certain follow-up procedures.

Whenever OSHA felt that the specific details of a particular provision were not absolutely essential to the protection of employees, however, we have tried to allow for the use of professional discretion. For example, OSHA revoked the retest requirements because we anticipate that employees will be provided the same amount of protection whether an STS is temporary or permanent. A professional directing a particular program, however, may deem it important to determine whether an employee's STS is temporary. The revised amendment is designed to give the supervising professional a considerable amount of latitude in making these decisions, while simultaneously affording the greatest amount of employee protection.

Hearing Protector Attenuation

The amendment requires that when an employee has suffered a STS, the employee must wear hearing protectors that attenuate exposure to a TWA of 85 dB or below. There may be some circumstances or environments where it is not possible to attenuate noise down to the appropriate level with hearing protectors. It should be noted that impossibility of compliance is recognized as a defense to any citation by the Review Commission.

In August, 1981, OSHA reopened the record and requested data and information on whether Appendix G [43] should be amended so that estimations of hearing protector attenuation would more accurately reflect the amount of attenuation received in actual industrial use. The value of hearing protectors lies in their ability to attenuate or reduce the noise that reaches the ear. Hearing protector manufacturers are required by the Environmental Protection Agency (EPA) to identify clearly in a uniform manner, the noise reduction capability of all hearing protectors sold in the United States. This measure of effectiveness is called the noise reduction rating (NRR). The NRR is a laboratory derived numerical estimate of attenuation that is provided by the hearing protector. Appendix G (subsequently redesignated as Appendix B), which is mandatory, describes the NRR and three alternative NIOSH methods that may be used to estimate hearing protector attenuation.

In response to the August 1981 request for information, some commenters suggested that the noise reduction rating (NRR) method produces an accurate estimate of real-world attenuation and should be continued (Exh. 327–34; Exh. 327–91, pp. 40–41; Exh. 327–85, p. 9; Exh. 327–95, p. 10; Exh. 327–131; Exh. 327–142, p. 7). Others stated that the NRR should not be adopted as part of the standard at all (Exh. 327–80, p. 3; Exh. 327–35, p. 5; Exh. 327–13, p. 7; Exh. 327–77, p. 9; Exh. 327–28, p. 3; Exh. 327–106, p. 7). Several comments suggested alternative methods of evaluating hearing protection (Exh. 327–47; Exh. 327–46; Exh. 327–62–A, p. 8; Exh. 327–99), while others supported de-rating of the laboratory derived attenuation values of hearing protectors to reflect the actual attenuation achieved under real-world conditions which is often significantly less than the NRR would indicate. (Exh. 327–84; Exh. 327–81; Exh. 327–66; Exh. 327–116). OSHA plans in the near future to propose a new rule to modify the existing noise standard (29 CFR 1910.95(b)). At that time the Agency will assess the overall effectiveness of the hearing conservation program, administrative and engineering controls, and personal protective equipment (i.e. hearing protectors). Since the issue raised in the present rulemaking—whether the Appendix should be modified so that estimations of hearing protector attenuation more accurately reflect the amount of attenuation achieved in "real use" situations—will be the central focus in that proposal, OSHA is not changing the provisions dealing with hearing protector attenuation at this time. Comments received in connection with this portion of the rulemaking on the hearing conservation amendment will be considered in the development of the proposed occupational noise standard.

Training Program

In the January amendment, OSHA required training to be repeated annually for all employees included in hearing conservation programs. The contents of the training program where specified in detail. Employees were required to be informed about: (1) OSHA's noise standard and the hearing conservation program; (2) the effects of noise on hearing; (3) identification of the specific machinery at the jobsite that could produce hazardous noise exposures; (4) the role of engineering and administrative controls in the reduction of noise exposure; (5) the contents of any noise control compliance plan in effect; (6) the purpose of hearing protectors, the advantages and disadvantages of various types of protectors, and instructions on their selection, fitting, use, and care; and (7) the purpose and procedures of audiometric testing.

After publication of the January amendment, OSHA received numerous comments contending that the training requirements were too detailed and did not provide employers with enough flexibility to tailor their training programs to the specific needs of their employees. In August, OSHA continued the stay of several training provisions, which are listed above (1, 3, 4, and 5) and requested information on the necessity of these training requirements for an effective hearing conservation program.

Many commenters stressed the importance of training in obtaining the full cooperation of employees in the hearing conservation program. However, these commenters also stated that such detailed training requirements were too rigid (Exh. 326–15, p. 9; Exh. 326–30, p. 2; Exh. 326–32, p. 1; Exh. 326–34, p. 9; Exh. 327–20, pp. 5–6; Exh. 327–70, p. 2; Exh. 327–76, pp. 13–14; Exh. 327–87, p. 4; Exh. 327–89, p. 9; Exh. 327–97, p. 6; Exh. 327–146, p. 7; Exh. 327–145, p. 7; Exh. 329–22, p. 6). For example, the DuPont Company stated:

> "DuPont believes it is appropriate for the agency to stay and modify the employee training provisions of the amendment because the specifications contained in the original version [January standard] were more detailed than necessary and did not permit enough employer discretion in determining what communications will guarantee them the best employee participation and cooperation in the hearing conservation program. DuPont agrees with OSHA that employee training is important but does not believe OSHA's specifications would elicit employee attention and compliance with necessary safety precautions" (Exh. 326–28, p. 7–8).

Other commenters indicated that the training requirements would be administratively burdensome and of little benefit (Exh. 326–12, p. 5; Exh. 327–51, p. 5; Exh. 327–93, p. 3; Tr. Vol. IV, p. 111, March 26, 1982). Some participants noted that professionally prepared and packaged programs that are often less costly and of higher quality than those developed in-house could be used if the stayed portions of the January amendment were revoked (Exh. 327–145, p. 9; Exh. 327–89, p. 9; Exh. 329–13, p. 4). In fact, the Dow Chemical Company declared that of some of the requirements listed above (3, 4 and 5) "are not necessary as they do not

[43] In the revised amendment, Appendix G: Methods for Estimating the Adequacy of Hearing Protector Attenuation, has been redesignated as Appendix B.

pertain to a hearing conservation program" (Exh. 327-76, pp. 13-14).

Other commenters addressed the role of training in industrial hearing conservation programs. Dr. Larry Royster, of the Department of Mechanical and Aerospace Engineering of North Carolina State University, stressed that successful training must reflect the company's commitment to hearing conservation and should include an explanation of how hearing loss occurs and how each employee can be protected, the mechanics of the program and the employee's and employer's respective responsibilities, detailed instructions on hearing protection devices, and an explanation of audiometer tests and procedures (Exh. 327-84).

Several participants, however, supported the inclusion of detailed training requirements (Exh. 326-41, p. 6; Exh. 326-42, p. 13; Exh. 327-59, p. 4; Exh. 327-66, pp. 92-94; Exh. 327-78, pp. 15-16; Exh. 327-107, p. 7; Exh. 327-109, p. 16-17; Exh. 327-136B, p. 6; Exh. 329-57, p. 2; Exh. 345, p. 11; Exh. 347, p. 9). For example, Frank Grimes of the United Steelworkers of America stated:

> "It is essential that the persons affected get as much detail as possible on the requirements and controls so that the program will be properly implemented" (Exh. 347, p. 9).

George Taylor, Director of Occupational Safety and Health for the AFL-CIO, also generally supported this view (Exh. 327-109, p. 17).

In general, the great majority of commenters agreed that employee training is an important part of any hearing conservation program. However, OSHA agrees with those commenters who contended that some details of the training program should be left to the judgment of the employer or the professional administering the hearing conservation program. In addition, several commenters (Exh. 327-88, p. 20; Exh. 327-110, p. 5; Exh. 327-59, p. 4) argued that the requirement to inform employees of the contents of the amendment is redundant with another requirement in the amendment: the requirement to post a copy of the standard in the workplace. OSHA does not believe it is necessary to include a specific requirement to inform employees of the contents of the standard in the training program when these documents are required to be readily available to employees and copies must be posted. The Agency also believes that it is not necessary to require the items listed, as 3, 4, and 5 above to be included in the training requirements because information about engineering and administrative controls and the employer's compliance plan is not essential to the employee's understanding of or cooperation in the hearing conservation program.

OSHA does not agree with the suggestion of the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers that section 6(b)(7) of the Act requires training in the identification of specific machinery at the jobsite that could produce hazardous noise exposures (Exh. 327-78, p. 16). Section 6(b)(7) of the Act states in part that "any standard promulgated under this subsection shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed * * *." Noise is the hazard to which employees are exposed and the requirement to include training on the effects of noise on hearing certainly meets the statutory obligation of apprising employees of the hazards encountered in the workplace.

For these reasons those provisions of the training requirements on which the stay was continued in August are hereby revoked. The revocation of some of these detailed requirements will allow employers to avail themselves of pre-prepared materials such as pamphlets and films, where appropriate, which may be more effective and less expensive than individually prepared programs. As written, the training provisions in the hearing conservation amendment require employers to conduct annual training for all employees included in their hearing conservation programs. Such training must include, at a minimum, information on the effects of noise on hearing; the purpose of hearing protectors; the advantages and disadvantages of various types of protectors; instructions in the selection, fitting, use, and care of protectors; and the purposes and procedures of audiometric testing.

Warning Signs

The January amendment required signs to be posted at entrances to or on the periphery of all well-defined work areas where employees might be exposed at or above a TWA of 85 dB. These signs were intended to alert employees that they were entering a high noise area and that hearing protectors might be required (see 29 CFR 1910.95(p), 46 FR 4164, January 16, 1981). The stay of this provision was continued in the August **Federal Register** document because of objections asserting that warning signs would be costly and inconvenient and that employees might be confused as to whether hearing protection was advisory or mandatory in certain areas (see 46 FR at 42630, August 21, 1981).

Warning signs by their nature describe area noise levels rather than individual exposures (Exh. 64-6, pp. 1-2). The need for warning signs depends on the nature and extent of the occupational exposure (Exh. 327-143, p. 8). For example, an employee in an area with 92 dB of noise for two hours a day with no significant noise exposure for the rest of the day would not need to wear hearing protectors, whereas the employee who spends the whole day in that area would (see Exh. 326-62, p. 3). Therefore, in cases where employees move in and out of noisy areas, such warning signs might be unduly confusing.

Similarly, many commenters felt that the fact that only *some* employees (those with STS) exposed above 85 dB were required to wear hearing protectors would contribute to the confusion.[42] Accordingly, they suggested that warning signs be required only when exposures were at or above an 8-hour TWA of 90 dB (Exh. 327-62, p. 8; Exh. 327-71, p. 4; Exh. 327-145, p. 9; Exh. 329-2, p. 4; Tr. Vol. I-B, p. 265, March 23, 1982; see also Exh. 327-101, p. 8).

Despite these considerations, W. J. Rheume of the Teamsters Union stated that "warning signs are an integral part of any hearing conservation program." He added that they are inexpensive indicators of high noise areas and have been common industrial practice for years (Tr. Vol. III, p. 62, March 25, 1982). Wayne Bodenheimer of the Colorado Hearing and Speech Center also favored the use of warning signs, characterizing them as "constant reminders to everyone about high noise areas and the need to protect themselves." Moreover, he felt it "naive" to assume that everyone would remember the high noise areas on a day-to-day basis without such visual reinforcement (Tr. Vol. I-B, p. 215, March 3, 1982). Similarly, Dan MacLeod, an industrial hygienist for the International Union of United Automobile, Aerospace and Agricultural Implements Workers of America, testified from personal experience about the educational value of warning signs (Tr. Vol. III, p. 98-99, March 25, 1982). In addition, a number of other commenters such as the International Brotherhood of

[42] Hearing protector use is mandatory for employees exposed below an 8-hour TWA of 90 dBA in only two situations: after experiencing a standard threshold shift and, where employee baselines are delayed beyond six months because mobile testing vans are used, for that period beyond six months until the baselines are obtained.

Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers Union and the Air Products and Chemicals Corporation also felt that warning signs were helpful in a hearing conservation program (see Exh. 327–13, p. 7; Exh. 327–56, p. 8; Exh. 327–58, p. 4; Tr. Vol. IV, p. 61, March 26, 1982; Exh. 327–78, p. 17; Exh. 327–86, p. 8; Exh. 327–135, p. 9; Exh. 327–138, pp. 6–7).

On the other hand, a number of participants questioned the educational value of warning signs (Exh. 327–70, p. 2; Exh. 327–76, p. 14; Exh. 327–97, p. 6; Exh. 327–89, p. 7). For example, Dr. Thomas Summar, who based his opinion on 25 years of experience in directing industrial hearing conservation programs, felt that warning signs had "minimal" educational value (Exh. 327–69, p. 9; Tr. Vol. I–B, p. 126, March 23, 1982). Others questioned the wisdom of the requirement and stated that warning signs would be ignored after a short period of time, becoming, in effect, part of the "scenery" (Exh. 327–116, p. 3; see also Exh. 326–62, p. 3; Tr. Vol. I–B, p. 265, March 23, 1982). Some commenters indicated that while warning signs have *some* educational value (Exh. 329–14, p. 10; Exh. 329–15, p. 7), good training and enforcement practices contribute far more to the success of the hearing conservation program (Exh. 329–19, p. 2; Exh. 327–51, p. 5; Exh. 327–129, p. 3). Moreover, Dow Chemical (Exh. 327–76, p. 14) and the Motor Vehicle Manufacturers Association (Exh. 327–103, p. 9), among others, suggested that warning signs are not necessary for an effective hearing conservation program.

Many commenters, including General Motors Corporation (Exh. 327–99), felt that while warning signs might be useful in some work environments, they serve no useful purpose in others; therefore the decision as to whether or not to post warning signs should be left to the discretion of the employer (see Exh. 327–89, pp. 7–8; Exh. 327–120, p. 4; Exh. 327–105, p. 7).

After a careful analysis of the record comments, OSHA agrees with the position taken by General Motors and the others cited above that the use of signs to warn employees about noise hazards in high noise areas should be left to the discretion of the employer. In so doing, OSHA finds some merit in the view that noise is more readily discernible than other harmful physical agents and therefore a specific warning sign requirement may not be necessary to protect employees and that in certain circumstances such signs might confuse rather than serve a useful educational purpose.

Therefore, the provision requiring that warning signs be posted in *all* areas where high noise exposures may occur will be revoked. The revocation of this requirement is not meant to discourage employers from posting any warning signs. Rather, it recognizes that the employer is more familiar with the workplace environment and will be in a better position to determine if the posting of signs in a given situation will aid in the success of the company's hearing conservation program. A number of those commenting noted that warning signs may be helpful in enforcing hearing protector use where required. Therefore we expect that, where appropriate, employers will voluntarily adopt the use of warning signs as part of their hearing conservation program.

Several unions argued that Section 6(b)(7) of the Act required the use of warning signs (Exh. 327–109, p. 18; Exh. 327–78, p. 17). Section 6(b)(7) of the Act merely requires that standards "prescribe the use of labels or *other appropriate forms of warnings as are necessary* to insure that employees are apprised of all hazards to which they are exposed * * * [*italics added*]. It should be clear from the above discussion that warning signs are not generally necessary, nor are they always the most appropriate method of apprising employees of the hazards of noise. Training may be a more appropriate vehicle to inform workers of the hazards of noise to their hearing and, in fact, employers are required to include this in their training program (see discussion above). Therefore, substantial evidence in the record supports the conclusion that the revocation of the warning sign requirement is not contrary to Section 6(b)(7) of the Act.

Recordkeeping

The January amendment required that extensive and detailed records be maintained of exposure measurements, audiometric tests, audiometric test room sound levels, and calibration of audiometers. OSHA explained (46 FR 4159) that recordkeeping is necessary to enable professional reviewers to "* * * make sure that the audiometric tests were carried out under proper conditions and that audiograms reflect employees' true hearing levels. Records [serve an] * * * educational purpose for employees because they enable employees to assess the continuing status of their hearing. In addition, they provide employers with a way of assessing the success or failure of the hearing conservation program."

After the amendment was promulgated in January, OSHA received many objections to the detailed nature and redundancy of some of these recordkeeping provisions. Therefore, on August 21, 1981 (46 FR 42630) OSHA continued the stay of several specific recordkeeping provisions and asked for comments on whether they were necessary for an effective hearing conservation program.

OSHA received many requests that the detailed recordkeeping provisions for noise exposure monitoring be revoked [43] (Exh. 326–31, p. 3; Exh. 327–93, p. 3; Exh. 327–145, pp. 9–10; Exh. 327–110, p. 5; Exh. 327–89, p. 10; Exh. 327–88, p. 10; Exh. 327–121, p. 3; Exh. 328–5; Exh. 329–17, p. 4). Objections focused on the excessive amount of detail required and argued that such detailed records are not necessary for an effective hearing conservation program. Many stated that the performance language at the beginning of the exposure monitoring recordkeeping requirement was sufficient.[44]

OSHA has concluded that the detailed exposure monitoring information originally required in the January amendment is not essential to an effective hearing conservation program. Since the recordkeeping provisions for audiometric tests require that a record of the lastest exposure measurement be retained with the employee's audiometric test record, much of the information required by the exposure monitoring recordkeeping requirements would be redundant.[45] OSHA believes that the detailed exposure measurement data required in January 1981 has extremely limited usefulness and this level of detail is not essential to the effective implementation of a hearing conservation program. Therefore, the stayed provisions concerning exposure monitoring recordkeeping have been

[43] The January amendment required that the exposure record include the employee's name and job classification; the date, location, and result of each measurement taken; and the number of measurements (where sound level meters are used to make the measurement), as well as a description of the noise measurement equipment used and the date of its last laboratory calibration. The stay of these provisions was continued in August.

[44] That provision simply stated that the employer must keep accurate records of all employee exposure measurements required by the amendment.

[45] As it now reads, the employer must keep the following information with audiometric test records:

(i) The employer shall retain all employee audiometric test records obtained pursuant to paragraph (g) of this section;

(ii) This record shall include:

(*a*) Name and job classification of the employee;

(*b*) Date of the audiogram;

(*c*) The examiner's name;

(*d*) Date of the last acoustic or exhaustive calibration of the audiometer; and

(*e*) Employee's most recent noise exposure assessment.

revoked. Thus, only the general exposure recordkeeping requirement is being retained. This is consistent with the mandates of sections 8(c)(3) and 8(d) of the Act which require that employers keep accurate records of employee exposures to harmful physical agents which are required to be monitored but that the burden of such an obligation be reduced to the maximum extent feasible.

OSHA also received many comments asking for the revocation of the stayed provisions regarding audiometric test records [46] (Exh. 326–62, p. 4; Exh. 327–20, p. 6; Exh. 327–90, p. 6; Exh. 327–88, p. 10; Exh. 327–121, p. 3; Exh. 327–145, pp. 9–10; Exh. 328–5; Exh. 329–17, p. 4). For example, the DuPont Company (Exh. 326–28, pp. 8–9) pointed out that it is unnecessary for each employee's audiogram to include general information, such as manufacturer and model of the audiometer and a statement of whether sound pressure levels in the test room comply with Table D–1 of Appendix D, when this information is available from other records. OSHA has determined that having a record of the qualifications of the examiner and of the manufacturer and model of the audiometer is not essential to determining the validity of the test. In addition, the requirement for a statement as to whether the sound pressure levels in the test room meet the levels of Table D–1 or Table D–2 of Appendix D is being revoked to be consistent with the revocation of Table D–1. The remaining requirement that a record be kept of background sound pressure levels in audiometric test rooms is sufficient to ensure adequate information to enable proper audiogram evaluation.[47] For these reasons, OSHA has revoked the stayed provisions on audiometric test records.

There is some confusion (Exh. 327–91, p. 46; Exh. 327–149, p. 8) about whether OSHA intended the audiometric information required to be kept to be entered on the face of audiograms.[48] It has been pointed out that some audiometric forms are not sufficiently large to permit this information to be actually recorded on them. It was not OSHA's intention to require that this information be entered on the actual audiogram; the wording of this provision has therefore been changed to permit this information to be kept *with* the audiometric records. Employers may maintain the information in a separate document that is kept or filed with the audiometric test results.

Several commenters requested revocation of the stayed provision that specified the audiometric frequencies for which background sound pressure level measurement records were to be kept and the date of the measurement (Exh. 327–145, pp. 9–10; Exh. 326–62, p. 4; Exh. 327–20, p. 6; Exh. 327–90, p. 6; Exh. 329–22). OSHA has concluded that this requirement is unnecessary since Table D–1 in Appendix D specifies the required frequencies.[49] Further, standard audiometric practice provides that the date of sound pressure measurements be recorded. OSHA has therefore revoked the stayed portions of the provision (see footnote 49, above).

Several commenters also asked that the stayed requirement to maintain records of acoustical and exhaustive audiometer calibrations be revoked because it is unnecessary (Exh. 326–62, p. 4; Exh. 327–20, p. 6; Exh. 327–90, p. 6; Exh. 327–141, p. 6; Exh. 329–22). OSHA agrees that this provision is redundant, since the date of the last acoustic or exhaustive calibration must be kept with the employee's audiometric test record. OSHA has therefore revoked this provision in its entirety.

By its actions today, OSHA has revoked those detailed recordkeeping requirements found to be unnecessarily burdensome or redundant. This is consistent with the mandate of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq* and section 8(d) of the OSH Act. OSHA does not agree with the Teamsters assertion (Exh. 345, p. 12) that trimming the recordkeeping requirements in this manner will reduce the effectiveness of the hearing conservation program. The recordkeeping requirements remaining in the revised amendment are essential and sufficient to insure the effectiveness of the hearing conservation program and OSHA so finds.

Record Retention

In August, OSHA stayed the provisions requiring records of test room sound pressure levels and audiometer calibrations to be kept for 5 years. The requirement for retaining audiometric test records was partially stayed insofar as it required employers to retain audiometric test records for 5 years after termination of employment. OSHA received many requests that these stayed provisions regarding record retention be revoked (Exh. 327–90, p. 6; Exh. 327–122, pp. 10–11; Exh. 327–125; Exh. 327–145, pp. 9–10; Exh. 327–149, pp. 8–10; Exh. 329–15, p. 7; Exh. 327–110, p. 5; Exh. 327–129, p. 3; Exh. 327–105, pp. 7–8; Exh. 327–143, p. 8). Some commenters cited the costs of retaining individual records and asserted that such records are not necessary to employee health or safety.

OSHA has decided to revoke the requirements to retain separate records of sound pressure levels and audiometer calibrations since this information must be kept with or on the audiogram. In addition, OSHA has concluded that retention of audiometric records for 5 years beyond termination of employment is not necessary, since this section also requires the employer to provide employees with access to their records. Since employees can obtain a copy of audiological records during their employment or upon termination of employment, the requirement to retain such records for 5 years after termination is not necessary. OSHA has concluded that it is more appropriate to require retention of audiometric test records for the length of employment rather than the longer period originally specified. Therefore the requirement to keep audiometric test records for 5 years after the termination of employment is being revoked.

Other Issues

Other Alternatives. In the August 21, 1981, **Federal Register** (46 FR 42631), OSHA noted that alternatives to the hearing conservation amendment had been suggested to the Agency. OSHA published and asked for comments on the following performance provisions, which are referred to as the alternative provisions or the three-paragraph alternative.

1. Employers shall conduct audiograms annually of every employee exposed to noise in excess of an 8-hour time weighted average sound level

[46] In August 1981, OSHA continued the stay of the following audiometric test recordkeeping provisions: qualifications of the person who administered the audiometric test, name of the manufacturer and model of the audiometer, and a statement of whether the sound pressure levels in the test room meet those specified in Table D–1 or D–2.

[47] The amendment requires that "the employer shall maintain accurate records of the measurements of the background sound pressure levels in audiometric test rooms (see paragraph (m)(2)(ii)(*f*) below).

[48] This information includes such things as measurements of background sound pressure level in the audiometric test room, and the examiner's name and date of the last calibration. Where this information is the same for an entire group of audiograms, this information may be maintained on one sheet of paper rather than separately for each audiogram.

[49] In January, employers were required to keep the following information concerning audiometric test rooms. (i) The employer shall maintain accurate records of the measurements of the background sound pressure levels in audiometric test rooms. (ii) *This record shall include:* (*a*) *Background sound pressure level measurements at each of the following octave bands: 500, 1000, 2000, 4000, and 8000 Hz;* and (*b*) *Date of measurement.* The stay was continued on the italicized portion of this provision in August.

(TWA) of 85 dBA,[50] according to standards on audiometers and audiometric test rooms established by the American National Standards Institute,[51] and under the supervision of a qualified technician;

2. Such audiograms shall be reviewed annually by a qualified audiologist, otolaryngologist or physician to identify employees whose hearing acuity has diminished more than normal;

3. Employers shall instruct all employees identified under paragraph 2 in the proper use of hearing protection when working in noisy areas and shall take appropriate measures to enforce the use of suitable protective devices for those employees when they are exposed to noise levels in excess of an 8-hour time weighted average sound level (TWA) of 85 dBA.

The August document noted that the purpose of publishing these alternatives was to "determine whether the goal of hearing conservation could be achieved by a performance standard that does not contain detailed compliance requirements but rather leaves implementation to physicians and other experts in the field" (46 FR 42631).

Many comments have been received regarding the adequacy of the employee protection that might be provided by implementation of these alternative provisions. Many commenters asserted, in general terms, that the alternatives would be as protective as the provisions contained in the January and August documents (Exh. 327–20; Exh. 327–26; Exh. 327–27; Exh. 327–28; Exh. 327–34; Exh. 327–51; Exh. 327–55; Exh. 327–62; Exh. 327–67; Exh. 327–89; Exh. 327–93; Exh. 327–101; Exh. 327–129; Exh. 327–145; Exh. 329–5; Exh. 329–10; Exh. 329–19; Exh. 329–42; Tr. Vol. III, pp. 179–180, March 25, 1982). These participants generally favored the simplicity and flexibility of the alternative provisions.

The Chocolate Manufacturers Association (Exh. 327–112, p. 7) thought that the three-paragraph alternative would increase compliance, and therefore worker protection, because it would be better understood by employers and employees and would be easier for small businesses to comply with. On the other hand, other commenters felt that the alternative standard would be more difficult for employers without strong technical capabilities to comply with effectively and suggested that the alternative standard would result in lack of uniform enforcement from one employer to another (see generally Exh. 327–78, p. 17; Exh. 327–113, p. 3; Exh. 327–98, p. 21).

Several commenters who generally supported the three-paragraph alternative suggested specific changes. For example, Owens Illinois (Exh. 326–15, p. 3), the Chocolate Manufacturer's Association (Exh. 327–112, p. 17–18), the National Soft Drink Association (Exh. 327–90, p. 6), and the Edison Electric Institute (Exh. 327–108, pp. 1–2) objected to the incorporation by reference of American National Standard Institute standards. Air Products and Chemicals (Exh. 327–58) suggested that a requirement be added stating that the employer should have a written description of the program to make all persons aware of it. R. C. Crewdson of Industrial Health, Inc. (Exh. 327–83, p. 5) requested addition of a requirement stating that the program be under the supervision of an audiologist, otolaryngologist, or physician.

Other comments were concerned that exceptions for temporary employees would not be provided (Exh. 327–90, p. 6; Exh. 327–110, pp. 1–2). The National Screw Machine Products Association (Exh. 327–124) and Lewis Goodfriend and Associates (Exh. 327–23, p. 5) suggested adding a provision that employers require hearing protection when noise exposures exceed a given level. Lewis Goodfriend and Associates (Exh. 327–23, pp. 4–5) also indicated that any alternative should clearly require the employer to provide the employees with hearing protectors and should "state how effective the hearing protection devices should be." The DuPont Company (Exh. 327–91, pp. 52–54) also recommended many additions to the alternative provisions, including the addition of a definition of significant threshold shift.

OSHA also received a large number of comments asserting that the alternative provisions would not provide employee protection equivalent to that offered by the August amendment (Exh. 327–22; Exh. 327–35; Exh. 327–59; Exh. 327–68; Exh. 327–76; Exh. 327–78; Exh. 327–82; Exh. 327–84; Exh. 327–87; Exh. 327–94; Exh. 327–102; Exh. 327–119; Exh. 327–148; Exh. 331–17; Exh. 345; Tr. Vol. IV, pp. 242, March 26, 1982). The American Textile Manufacturer's Institute (Exh. 327–106, p. 1), although generally in favor of a performance-oriented standard, stated that the three-paragraph alternative "certainly would not provide needed protection to workers * * *." The International Brotherhood of Teamsters (Exh. 345, p. 12) argued that "* * * it offers no improvement over the previous standard [29 CFR 1910.95(b)(3)] * * *."

Some comments contained more specific criticism. For example, submissions by Dow Chemical (Exh. 327–76, p. 17), Shell Oil (Exh. 327–102, p. 13) and others emphasized the need for an explicit monitoring requirement, or offered alternative performance language for the monitoring provision (Exh. 327–87, p. 5; Exh. 327–91, p. 52; Exh. 327–99; Exh. 327–106, p. 1; Exh. 345, pp. 12–13). In addition, one commenter pointed out that the three-paragraph alternative fails to indicate the types and levels of sounds to be included in the noise exposure measurement (Exh. 327–82). He suggested that the lack of such a specification could result in underestimates of exposure.

The National Screw Machine Products Association (Exh. 327–124) and the Alliance of Metal Working Industries (Exh. 327–72, p. 4) noted that the alternative provisions suggest that only employees who have experienced a significant threshold shift be instructed in the use of, and required to wear, hearing protectors. They suggested that the three-paragraph alternative be modified to require that employers instruct all employees to wear hearing protection where noise levels exceed those shown in Table G–16a. Shell Oil (Exh. 327–102, pp. 13–14) pointed out, "The * * * alternative fails to provide for employee education and training, except for employees who have already suffered a hearing loss. To prevent hearing loss, employees must know when and how to wear hearing protectors, and what is gained by their use."

The DuPont (Exh. 327–91, p. 53) and General Motors companies (Exh. 327–99) added definitions of significant threshold shift in their suggested performance alternatives. The Motor Vehicle Manufacturers Association (Exh. 327–103, p. 9) contended that the alternative's lack of a definition of significant threshold shift is a "serious omission." The American Textile Manufacturers Institute (Exh. 327–106, p. 1) asserted that referral criteria are needed for evaluation of workers who develop medical abnormalities. In addition, commenters called attention to what they felt was ambiguous language in the three-paragraph alternative. For example, the National Soft Drink Association (Exh. 327–90, p. 6) pointed out that the language "hearing acuity * * * diminished more than normal" is ambiguous.

[50] See Appendix A.

[51] American National Standards Institute (ANSI) Specification for Audiometers, S3.6–1969, and the Institute's Specification for Audiometric Test Rooms, ANSI S3.1–1977. Audiometers shall be calibrated annually to ensure the standard is met. ANSI S3.1–1977 must be followed for testing performed at frequencies of 1,000 Hz and above; for testing below 1,000 Hz, ANSI S3.1–1960 may be used.

A few commenters suggested that the three-paragraph alternative would result in fewer enforcement problems than would a more specification-oriented standard. The Chamber of Commerce (Exh. 329–10, p. 6), for example, stated "The alternative would afford more flexibility for compliance officers * * *; by being freed from enforcing overly specific requirements * * * [compliance officers] could perform less intensive but more expeditious and results-oriented inspections." Others, however, viewed such lack of specificity with alarm. The Portland Cement Association, for example, (Exh. 327–113, p. 3) stated, "The less specific a standard is, the more room there is for subjectivity on the part of the inspector * * *. Unduly vague standards can open the way for abuses and arbitrary action, without any positive effect on hearing conservation" (see also Exh. 327–78, p. 19). Similarly, Standard Oil of Indiana (Exh. 327–87, p. 5) asserted, "the problem with * * * the proposed alternative is that there is no way to measure compliance because many of the terms are vague. Consequently, each compliance officer becomes an interpreter of the law and uniform enforcement is lost." Others simply stated that the 3-paragraph alternative is absolutely unenforceable (Exh. 327–78, p. 17; Tr. Vol. III, p. 52–65, March 25, 1982).

Organization Resources Counselors (Exh. 327–98, p. 21) noted that implementing the alternative provisions could be difficult for employers without strong technical capability. R. C. Crewdson of Industrial Health, Inc. (Exh. 327–82, p. 6) pointed out that hearing conservation programs should be supervised by professionals. This requirement was not included in the three-paragraph alternative. In a similar vein, Pelton/Blum, Inc. (Exh. 329–12) commented, "It has been our experience that most small and medium sized companies do not necessarily have the knowledge to carry out a hearing conservation program when it is stated [as] in the 3 paragraph alternative provisions. The Amendment as * * * in August * * * would allow even the individual that is not knowledgeable to begin to see how a program * * * works."

OSHA has carefully reviewed the comments in the record regarding the efficacy of the three paragraph alternative provisions. Ideally, an occupational safety and health standard should be specific enough to give employers adequate notice of what is expected of them and to allow for uniform enforcement from one employer to another, and be flexible enough to allow employers to comply in the manner that best fits the circumstances of the company. These considerations must be balanced against the need to be able to enforce the standard vigorously against any recalcitrant employer who fails to provide employees with meaningful protection. Although the Agency supports the use of performance language whenever possible, and has used the performance approach in several sections of this revised amendment, the alternative provisions do not provide the degree of specification needed to ensure employee protection against occupational hearing loss. The Agency position on this matter is generally corroborated by the American Textile Manufacturers Institute:

> "ATMI supports performance standards with minimum specification and any such standard in the area of hearing conservation would have to include the following elements; required monitoring of noise exposures, feasible engineering controls, adequate protective devices, periodic audiometric evaluation and referral criteria for evaluation of workers developing abnormalities. Obviously, the proposal [three-paragraph alternative] in the notice does not meet those criteria. In striking contrast, the regulation made effective in the August 21 notice meets those criteria and in our judgment, would be adequate" (Exh. 327–106, p. 1).

For example, a specific index of hearing damage serious enough to trigger follow-up action is needed to provide guidance to employers. Without a standardized definition of STS, OSHA believes there would be great variability in the protective actions taken (see Exh. 327–78, p. 19]. Approximately forty definitions of STS have been suggested to OSHA (see discussion in audiometry section above), indicating the range of opinion on the correct interpretation of this important term. Therefore, the Agency considers that the alternative provisions' lack of a definition of STS would result in less than uniform protection for noise-exposed employees.

OSHA also finds the 3-paragraph alternative's lack of minimum requirements for audiometer calibration a serious problem. Calibration requirements are essential to ensure the validity and comparability of tests. If audiometers are not properly calibrated, employers may expend substantial resources with little assurance that test results can be compared from one year to the next, and without assurance that employees are receiving adequate protection.

OSHA believes that the lack of a requirement that employees be instructed in hearing protector use *before* a hearing loss occurs is a serious oversight of the 3-paragraph alternative. The absence of such a provision runs counter to the Agency's emphasis on *preventive* measures in occupational safety and health.

Similarly, to help avoid hearing loss OSHA's amendment requires that hearing protectors be properly fitted. The amount of protection offered by hearing protectors is greatly dependent on proper fit. Further, hearing protectors themselves vary considerably in the degree of attenuation offered. Without an assessment of the protection actually offered by hearing protectors in specific noise environments, employers may believe that sufficient protection is being provided when in fact it is inadequate. OSHA feels that the failure to require fitting and attenuation evaluations of hearing protectors would seriously reduce the degree of protection provided to employees.

Further, OSHA believes there are serious questions regarding the Agency's ability to enforce the 3-paragraph alternative. Some have suggested that OSHA enforcement would be improved since it would have to focus on results, i.e., whether protection is being provided rather than on the specifics of program implementation (Exh. 327–99, pp. 4–5; Exh. 329–10, p. 6). Consequently, others noted that OSHA compliance officers would have to be given special training in evaluating audiometric data bases (Exh. 327–98, pp. 21–22; see also Exh. 327–89, p. 9). However, no commenter suggested how OSHA compliance personnel would determine at what point a given hearing conservation program was protective enough to be considered "in compliance." In addition, many of the phrases used in the three-paragraph alternative, such as "more than normal" and "noisy areas" are subject to many interpretations and would therefore be difficult to enforce in practice. Moreover, if the Agency were to revise the three paragraph alternative by adding the various specific requirements that many of the participants felt were necessary to protect employees adequately, the alternative would become as long and as specific as the revised amendment published today.

For the reasons discussed above, OSHA has concluded that the 3-paragrpah alternative would not be as protective as the hearing conservation amendment published in August. In particular, the failure of the alternative provisions to provide guidance to employers in the areas of pre-impairment hearing protection use, the

definition of a standard threshold shift, and employee training is felt to be sufficient to support this conclusion. Therefore, the alternative provisions will not be adopted.

Performance Criteria

The preamble to the August Federal Register document discussed a study (see post-promulgation comment #266a) recommending that performance criteria be developed for determining the effectiveness of an employer's hearing conservation program.[52] That study, which was prepared for the Rockefeller Foundation, suggested that results of analyses of audiometric data be the index of such effectiveness. Comments and information were requested on the advisability of adopting such an approach in the hearing conservation amendment. The comments and testimony received in response to this recommendation generally agreed that evaluating the effectiveness of hearing conservation programs is desirable, but there was little consensus among commenters regarding what performance criteria should be used.

A number of commenters felt that audiometric data analysis would be a useful tool for demonstrating the effectiveness of a hearing conservation program but made no recommendations concerning the minimum appropriate criteria for judging a program (Exh. 327–99; Exh. 327–113, p. 3; Exh. 327–125). Some participants stated that audiometric data showing an incidence of significant threshold shift rates greater than 5 to 10 percent should indicate a problem with a given hearing conservation program (Exh. 327–54; Exh. 327–58; Tr. Vol. II, p. 128, 3/29/82; Tr. Vol. II, p. 59, March 26, 1982). Others recommended using analysis of audiometric data as an indicator but only after the data has been adjusted for variables such as age, sex, race, years or exposure at various sound levels, and so forth (Exh. 327–84; Exh. 327–77, pp. 7–8; Exh. 327–66, pp. 11–85; Exh. 327–120, p. 4).

Some stated that analysis of audiometric data by individual employers would not really indicate the effectiveness of a hearing conservation program (Exh. 327–15; Exh. 327–147, p. 6–7). In his testimony, Dr. Crewdson, a physicist, suggested that the inaccuracy and variability of individual test results would make it impossible to assess trends by simply looking at audiogram results. He recommended evaluation of several years' worth of data by experienced professionals (Tr. Vol. V, pp. 146–162, March 29, 1982). Another commenter stated:

> "[There is] no generally accepted method * * * available to evaluate the effectiveness of individual hearing conservation programs. * * * With computer-assisted data collection, and a uniform criteria [sic] for describing threshold shift, the analysis of audiometric test data may prove to be a tool for the future. However, the current methods of data collection and retrieval do not make the analysis of audiometric test data a feasible method for evaluating the effectiveness of a hearing conservation program" (Exh. 327–103).

Other commenters agreed, stating:

> "[We] do not believe objective or quantitative evaluation of HCP's could be statistically significant or an adequate indicator of program effectiveness" (Exh. 327–120, p. 4).

and

> "* * * The analysis of audiometric data is an incomplete approach to an effective and enforceable HCP" (Exh. 327–141).

A number or commenters stated that responsibility for determining program effectiveness should be left in the hands of professional audiologists, otolaryngologists and physicians (Exh. 327–35, p. 5; Exh. 327–105, p. 7; Exh. 327–112, p. 17; Tr. Vol. V, p. 159–160, March 29, 1982). In addition, several stated that OSHA should not attempt to specify mandatory criteria for evaluating hearing conservation programs (Exh. 327–35, p. 5; Exh. 327–77, p. 7–8; Exh. 327–143, p. 2; Exh. 331–11).

OSHA agrees with the large number of commenters who stressed the importance of professional judgment in evaluating audiometric test data. The Agency believes that it would not be useful to draw conclusions on the effectiveness of specific hearing conservation programs on the basis of test data alone, because of the many variables that may affect these results. OSHA believes that it should be left to the judgment of the professionals supervising the audiometric examinations and analyzing the results to advise the employer concerning the effectiveness of the employer's hearing conservation program. Therefore, the final standard does not contain a specific requirement for employer assessment of the effectiveness of hearing conservation programs.

At this time the Agency does not know of any specific performance criteria which would unequivocally demonstrate the effectiveness of any hearing conservation program.

Exemptions

At the present time, the agency is exempting the gas and oil well drilling and servicing industry from the requirements of this revised amendment. OSHA is granting this exemption because of the unique characteristics of this industry, which characteristics have also convinced the agency to initiate rulemaking that addresses the unique hazards for the gas and oil well drillers and servicers.[53]

Appendices Paragraph (r)

The August 1981 Federal Register document continued stays on Appendix B (Temporal Sampling Procedures for Use with a Sound Level Meter) and Appendix F (Calculations and Application of Age Corrections to Audiograms). As discussed in the monitoring section above, OSHA is revoking Appendix B. In addition, the stay on Appendix F is being lifted (see discussion under standard threshold shift above) and that appendix is being redesignated as Appendix B.

Effective Dates

The hearing conservation amendment was originally promulgated on January 16, 1981 (46 FR 4078) to become effective on April 15, 1981. After several temporary stays, portions of the amendment went into effect on August 22, 1981 (46 FR 42622, August 21, 1981). Those provisions which went into effect on August 22, 1981, and which were not substantially amended in this final rule are listed in Table I below (with new paragraph designations, where appropriate). In the original promulgation, employers were allowed until February 22, 1982, to complete noise monitoring. The August 22, 1981, effective date of the amendment and the start-up date for monitoring remain unchanged.

Table I

Provisions Which Went into Effect on August 22, 1981, and Have Not Been Amended

Paragraph (c)(1)
Paragraph (d)(2)(i)
Paragraphs (g) (1) and (2)
Paragraph (g)(4)
Paragraph (g)(6)
Paragraphs (g)(7)(iii) (A), (B), (C) and (D)
Paragraphs (g)(8)(ii) (A) and (B)
Paragraphs (h) (1), (3) and (4)
Paragraph (h)(5)(iii)
Paragraphs (i) (1) and (2)
Paragraph (i)(2)(ii)

[52] Berger, E. H. and L. H. Royster. "The Effects of Noise Exposure On One Industrial Population," October 1976.

[53] A combination of factors, including tremendous variation in working conditions, high mobility of operations, extremely high employee turnover rates, and limited accessability of many worksites, convinced OSHA that the interests of both employers and employees would be better served by developing a standard more specifically tailored to the needs of this industry (Exh. 329–34, pp 1–2; Exh. 329–33; Exh. 329–29, p. 2; Tr. Vol. I–B, pp. 156–157, 167–169; Tr. Vol. V, pp. 73–75).

Paragraphs (i) (3), (4) and (5)
Paragraphs (j) (1), (2) and (4)
Paragraph (k)
Paragraph (l)
Paragraphs (m) (2), (3), (4) and (5)
Paragraph (n)
Appendices A, B, C, D, E, H and I

Portions of the original hearing conservation amendment were stayed beyond August 22, 1981, and were the subject of this rulemaking. In addition, some provisions which went into effect on August 22, 1981, are also being modified by this final rule. The provisions being issued today in final form will be effective on April 7, 1983, to allow employers enough time to familiarize themselves with the revisions. Table II below lists the provisions and modified provisions (as indicated) which will be effective April 7, 1983.

Table II

Provisions Which Are Effective April 7, 1983

Paragraph (c)(2)
*Paragraph (d)(1)
Paragraphs (d)(1) (i) and (ii)
Paragraph (d)(2)(ii)
Paragraphs (d)(3) (i) and (ii)
Paragraph (e)
*Paragraph (f)
*Paragraph (g)(3)
*Paragraph (g)(5)(i)
Paragraph (g)(5)(ii)
*Paragraph (g)(5)(iii)
Paragraph (g)(5)(iv)
*Paragraph (g)(7)(i)
Paragraph (g)(7)(ii)
*Paragraph (g)(7)(iii)
*Paragraph (g)(8)(i)
Paragraph (g) (8)(ii)
*Paragraphs (g)(8)(ii) (C) and (D)
Paragraph (g)(8)(iii)
Paragraph (g)(9)
Paragraph (g)(10)
*Paragraph (h)(2)
*Paragraphs (h)(5) (i) and (ii)
Paragraph (i)(2)(i)
Paragraph (i)(2)(ii)(A)
*Paragraph (i)(2)(ii)(B)
*Paragraph (j)(3)
*Paragraph (m) (1)
Paragraph (o)
*Paragraph (p)
Appendix F (from January 16, 1981)
Appendix G

*An asterisk denotes those provisions which are amendments of provisions that were effective August 22, 1961.

Initially, employers were allowed until August 22, 1982, to complete baseline audiograms. OSHA received a number of requests for extensions of the time allowed to obtain baseline audiograms. Some commenters indicated that they needed more time to comply for various practical and resource reasons (Exh. 329–3; Exh. 327–106). Others stated that OSHA's final decisions on critical technical issues were necessary before baseline audiograms could be obtained (Exh. 327–88; Tr. Vol. IV, p. 202, March 26, 1982.) One commenter stated that an extension of time to obtain baseline audiograms would avoid the paperwork of asking for a variance (Ex. 329–3). OSHA agrees that an extension of time in which to obtain employee audiograms of approximately one year is appropriate under the circumstances of this proceeding. A number of important elements of the audiometric testing provisions have been reconsidered and revised. Employers could not have performed baseline audiograms until these issues were resolved. Employers now need sufficient time to incorporate these requirements into their hearing conservation programs and to purchase the necessary equipment to run such a testing program or to make the necessary arrangements for consultants to perform these services. In the January 1981 amendments, OSHA allowed approximately one year from the effective date of the standard for employers to obtain baseline audiograms. Since a number of elements related to the baseline audiogram were stayed, OSHA will extend the date for completion of baseline audiograms until March 1, 1984, which is approximately one year after the publication of this document. [54]

List of Subjects in 29 CFR Part 1910

Occupational safety and health, Health.

Authority: This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, N.W., Washinton, D.C. 20210.

Pursuant to sections 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599, 29 U.S.C. 655, 657), Secretary of Labor's Order No. 8–76 (41 FR 25059) and 29 CFR Part 1911, § 1910.95 of 29 CFR Part 1910 is amended as set forth below.

(Secs. 4, 6, 8, 84 Stat. 1592, 1593, 1599, [29 U.S.C. 653, 655, 657]; 5 U.S.C. 553; Secretary of Labor's Order No. 8–76 (41 FR 25059))

Signed at Washington, D.C. this 28th day of February 1983.

Thorne G. Auchter,

Assistant Secretary of Labor.

PART 1910—[AMENDED]

Paragraphs (c) through (p) and Appendices A through I of 29 CFR 1910.95 are revised to read as follows:

§ 1910.95 Occupational noise exposure.

* * * * *

(c) *Hearing conservation program.* (1) The employer shall administer a continuing, effective hearing conservation program, as described in paragraphs (c) through (o) of this section, whenever employee noise exposures equal or exceed an 8-hour time-weighted average sound level (TWA) of 85 decibels measured on the A scale (slow response) or, equivalently, a dose of fifty percent. For purposes of the hearing conservation program, employee noise exposures shall be computed in accordance with Appendix A and Table G–16a, and without regard to any attenuation provided by the use of personal protective equipment.

(2) For purposes of paragraphs (c) through (n) of this section, an 8-hour time-weighted average of 85 decibels or a dose of fifty percent shall also be referred to as the action level.

(d) *Monitoring.* (1) When information indicates that any employee's exposure may equal or exceed an 8-hour time-weighted average of 85 decibels, the employer shall develop and implement a monitoring program. (i) The sampling strategy shall be designed to identify employees for inclusion in the hearing conservation program and to enable the proper selection of hearing protectors.

(ii) Where circumstances such as high worker mobility, significant variations in sound level, or a significant component of impulse noise make area monitoring generally inappropriate, the employer shall use representative personal sampling to comply with the monitoring requirements of this paragraph unless the employer can show that area sampling produces equivalent results.

(2)(i) All continuous, intermittent and impulsive sound levels from 80 decibels to 130 decibels shall be integrated into the noise measurements.

(ii) Instruments used to measure employee noise exposure shall be calibrated to ensure measurement accuracy.

(3) Monitoring shall be repeated whenever a change in production, process, equipment or controls increases noise exposures to the extent that:

(i) Additional employees may be exposed at or above the action level; or

(ii) The attenuation provided by hearing protectors being used by employees may be rendered inadequate to meet the requirements of paragraph (j) of this section.

(e) *Employee notification.* The employer shall notify each employee exposed at or above an 8-hour time-weighted average of 85 decibels of the results of the monitoring.

[54] It should be noted, however, that this delayed effective date is not in addition to the amount of time employers are normally given to obtain baseline audiograms under paragraph (g)(5)(i). Thus, all current employees must have baseline audiograms taken by March 1, 1984, or six months from the date of their first exposure at or above the action level, whichever is longer.

(f) *Observation of monitoring.* The employer shall provide affected employees or their representatives with an opportunity to observe any noise measurements conducted pursuant to this section.

(g) *Audiometric testing program.* (1) The employer shall establish and maintain an audiometric testing program as provided in this paragraph by making audiometric testing available to all employees whose exposures equal or exceed an 8-hour time-weighted average of 85 decibels.

(2) The program shall be provided at no cost to employees.

(3) Audiometric tests shall be performed by a licensed or certified audiologist, otolaryngologist, or other physician, or by a technician who is certified by the Council of Accreditation in Occupational Hearing Conservation, or who has satisfactorily demonstrated competence in administering audiometric examinations, obtaining valid audiograms, and properly using, maintaining and checking calibration and proper functioning of the audiometers being used. A technician who operates microprocessor audiometers does not need to be certified. A technician who performs audiometric tests must be responsible to an audiologist, otolaryngologist or physician.

(4) All audiograms obtained pursuant to this section shall meet the requirements of Appendix C: *Audiometric Measuring Instruments.*

(5) *Baseline audiogram.* (i) Within 6 months of an employee's first exposure at or above the action level, the employer shall establish a valid baseline audiogram against which subsequent audiograms can be compared.

(ii) *Mobile test van exception.* Where mobile test vans are used to meet the audiometric testing obligation, the employer shall obtain a valid baseline audiogram within 1 year of an employee's first exposure at or above the action level. Where baseline audiograms are obtained more than 6 months after the employee's first exposure at or above the action level, employees shall wearing hearing protectors for any period exceeding six months after first exposure until the baseline audiogram is obtained.

(iii) Testing to establish a baseline audiogram shall be preceded by at least 14 hours without exposure to workplace noise. Hearing protectors may be used as a substitute for the requirement that baseline audiograms be preceded by 14 hours without exposure to workplace noise.

(iv) The employer shall notify employees of the need to avoid high levels of non-occupational noise exposure during the 14-hour period immediately preceding the audiometric examination.

(6) *Annual audiogram.* At least annually after obtaining the baseline audiogram, the employer shall obtain a new audiogram for each employee exposed at or above an 8-hour time-weighted average of 85 decibels.

(7) *Evaluation of audiogram.* (i) Each employee's annual audiogram shall be compared to that employee's baseline audiogram to determine if the audiogram is valid and if a standard threshold shift as defined in paragraph (g)(10) of this section has occurred. This comparison may be done by a technician.

(ii) If the annual audiogram shows that an employee has suffered a standard threshold shift, the employer may obtain a retest within 30 days and consider the results of the retest as the annual audiogram.

(iii) The audiologist, otolaryngologist, or physician shall review problem audiograms and shall determine whether there is a need for further evaluation. The employer shall provide to the person performing this evaluation the following information:

(A) A copy of the requirements for hearing conservation as set forth in paragraphs (c) through (n) of this section;

(B) The baseline audiogram and most recent audiogram of the employee to be evaluated;

(C) Measurements of background sound prssure levels in the audiometric test room as required in Appendix D: Audiometric Test Rooms.

(D) Records of audiometer calibrations required by paragraph (h)(5) of this section.

(8) *Follow-up procedures.* (i) If a comparison of the annual audiogram to the baseline audiogram indicates a standard threshold shift as defined in paragraph (g)(10) of this section has occurred, the employee shall be informed of this fact in writing, within 21 days of the determination.

(ii) Unless a physician determines that the standard threshold shift is not work related or aggravated by occupational noise exposure, the employer shall ensure that the following steps are taken when a standard threshold shift occurs:

(A) Employees not using hearing protectors shall be fitted with hearing protectors, trained in their use and care, and required to use them.

(B) Employees already using hearing protectors shall be refitted and retained in the use of hearing protectors and provided with hearing protectors offering greater attenuation if necessary.

(C) The employee shall be referred for a clinical audiological evaluation or an otological examination, as appropriate, if additional testing is necessary or if the employer suspects that a medical pathology of the ear is caused or aggravated by the wearing of hearing protectors.

(D) The employee is informed of the need for an otological examination if a medical pathology of the ear that is unrelated to the use of hearing protectors is suspected.

(iii) If subsequent audiometric testing of an employee whose exposure to noise is less than an 8-hour TWA of 90 decibels indicates that a standard threshold shift is not persistent, the employer:

(A) Shall inform the employee of the new audiometric interpretation; and

(B) May discontinue the required use of hearing protectors for that employee.

(9) *Revised baseline.* An annual audiogram may be substituted for the baseline audiogram when, in the judgment of the audiologist, otolaryngologist or physician who is evaluating the audiogram:

(i) The standard threshold shift revealed by the audiogram is persistent; or

(ii) The hearing threshold shown in the annual audiogram indicates significant improvement over the baseline audiogram.

(10) *Standard threshold shift.* (i) As used in this section, a standard threshold shift is a change in hearing threshold relative to the baseline audiogram of an average of 10 dB or more at 2000, 3000, and 4000 Hz in either ear.

(ii) In determining whether a standard threshold shift has occurred, allowance may be made for the contribution of aging (presbycusis) to the change in hearing level by correcting the annual audiogram according to the procedure described in Appendix F: *Calculation and Application of Age Correction to Audiograms.*

(h) *Audiometric test requirements.* (1) Audiometric tests shall be pure tone, air conduction, hearing threshold examinations, with test frequencies including as a minimum 500, 1000, 2000, 3000, 4000, and 6000 Hz. Tests at each frequency shall be taken separately for each ear.

(2) Audiometric tests shall be conducted with audiometers (including microprocessor audiometers) that meet the specifications of, and are maintained and used in accordance with, American National Standard Specification for Audiometers, S3.6–1969.

(3) Pulsed-tone and self-recording audiometers, if used, shall meet the requirements specified in Appendix C: *Audiometric Measuring Instruments.*

(4) Audiometric examinations shall be administered in a room meeting the requirements listed in Appendix D: *Audiometric Test Rooms.*

(5) *Audiometer calibration.* (i) The functional operation of the audiometer shall be checked before each day's use by testing a person with known, stable hearing thresholds, and by listening to the audiometer's output to make sure that the output is free from distorted or unwanted sounds. Deviations of 10 decibels or greater require an acoustic calibration.

(ii) Audiometer calibration shall be checked acoustically at least annually in accordance with Appendix E: *Acoustic Calibration of Audiometers.* Test frequencies below 500 Hz and above 6000 Hz may be omitted from this check. Deviations of 15 decibels or greater require an exhaustive calibration.

(iii) An exhaustive calibration shall be performed at least every two years in accordance with sections 4.1.2; 4.1.3.; 4.1.4.3; 4.2; 4.4.1; 4.4.2; 4.4.3; and 4.5 of the American National Standard Specification for Audiometers, S3.6–1969. Test frequencies below 500 Hz and above 6000 Hz may be omitted from this calibration.

(i) *Hearing protectors.* (1) Employers shall make hearing protectors available to all employees exposed to an 8-hour time-weighted average of 85 decibels or greater at no cost to the employees. Hearing protectors shall be replaced as necessary.

(2) Employers shall ensure that hearing protectors are worn:

(i) By an employee who is required by paragraph (b)(1) of this section to wear personal protective equipment; and

(ii) By any employee who is exposed to an 8-hour time-weighted average of 85 decibels or greater, and who:

(A) Has not yet had a baseline audiogram established pursuant to paragraph (g)(5)(ii); or

(B) Has experienced a standard threshold shift.

(3)Employees shall be given the opportunity to select their hearing protectors from a variety of suitable hearing protectors provided by the employer.

(4) The employer shall provide training in the use and care of all hearing protectors provided to employees.

(5) The employer shall ensure proper initial fitting and supervise the correct use of all hearing protectors.

(j) *Hearing protector attenuation.* (1) The employer shall evaluate hearing protector attenuation for the specific noise environments in which the protector will be used. The employer shall use one of the evaluation methods described in Appendix B: *Methods for Estimating the Adequacy of Hearing Protection Attenuation.*

(2) Hearing protectors must attenuate employee exposure at least to an 8-hour time-weighted average of 90 decibels as required by paragraph (b) of this section.

(3) For employees who have experienced a standard threshold shift, hearing protectors must attenuate employee exposure to an 8-hour time-weighted average of 85 decibels or below.

(4) The adequacy of hearing protector attenuation shall be re-evaluated whenever employee noise exposures increase to the extent that the hearing protectors provided may no longer provide adequate attenuation. The employee shall provide more effective hearing protectors where necessary.

(k) *Training program.* (1) The employer shall institute a training program for all employees who are exposed to noise at or above an 8-hour time-weighted average of 85 decibels, and shall ensure employee participation in such program.

(2) The training program shall be repeated annually for each employee included in the hearing conservation program. Information provided in the training program shall be updated to be consistent with changes in protective equipment and work processes.

(3) The employer shall ensure that each employee is informed of the following:

(i) The effects of noise on hearing;

(ii) The purpose of hearing protectors, the advantages, disadvantages, and attenuation of various types, and instructions on selection, fitting, use, and care; and

(iii) The purpose of audiometric testing, and an explanation of the test procedures.

(l) *Access to information and training materials.* (1) The employer shall make available to affected employees or their representatives copies of this standard and shall also post a copy in the workplace.

(2) The employer shall provide to affected employees any informational materials pertaining to the standard that are supplied to the employer by the Assistant Secretary.

(3) The employer shall provide, upon request, all materials related to the employer's training and education program pertaining to this standard to the Assistant Secretary and the Director.

(m) *Recordkeeping.*—(1) *Exposure measurements.* The employer shall maintain an accurate record of all employee exposure measurements required by paragraph (d) of this section.

(2) *Audiometric tests.* (i) The employer shall retain all employee audiometric test records obtained pursuant to paragraph (g) of this section:

(ii) This record shall include:

(A) Name and job classification of the employee;

(B) Date of the audiogram;

(C) The examiner's name;

(D) Date of the last acoustic or exhaustive calibration of the audiometer; and

(E) Employee's most recent noise exposure assessment.

(F) The employer shall maintain accurate records of the measurements of the background sound pressure levels in audiometric test rooms.

(3) *Record retention.* The employer shall retain records required in this paragraph (m) for at least the following periods.

(i) Noise exposure measurement records shall be retained for two years.

(ii) Audiometric test records shall be retained for the duration of the affected employee's employment.

(4) *Access to records.* All records required by this section shall be provided upon request to employees, former employees, representatives designated by the individual employee, and the Assistant Secretary. The provisions of 29 CFR 1910.20 (a)–(e) and (g)–(i) apply to access to records under this section.

(5) *Transfer of records.* If the employer ceases to do business, the employer shall transfer to the successor employer all records required to be maintained by this section, and the successor employer shall retain them for the remainder of the period prescribed in paragraph (m) (3) of this section.

(n) *Appendices.* (1) Appendices A, B, C, D, and E to this section are incorporated as part of this section and the contents of these Appendices are mandatory.

(2) Appendices F and G to this section are informational and are not intended to create any additional obligations not

otherwise imposed or to detract from any existing obligations.

(o) *Exemptions.* Paragraphs (c) through (n) of this section shall not apply to employers engaged in oil and gas well drilling and servicing operations.

(p) *Startup date.* Baseline audiograms required by paragraph (g) of this section shall be completed by March 1, 1984.

* * * * *

Appendix A: Noise Exposure Computation

This Appendix is Mandatory

I. Computation of Employee Noise Exposure

(1) Noise dose is computed using Table G-16a as follows:

(i) When the sound level, L, is constant over the entire work shift, the noise dose, D, in percent, is given by: $D = 100\ C/T$ where C is the total length of the work day, in hours, and T is the reference duration corresponding to the measured sound level, L, as given in Table G-16a or by the formula shown as a footnote to that table.

(ii) When the workshift noise exposure is composed of two or more periods of noise at different levels, the total noise dose over the work day is given by:

$$D = 100\ (C_1/T_1 + C_2/T_2 + \ldots + C_n/T_n),$$

where C_n indicates the total time of exposure at a specific noise level, and T_n indicates the reference duration for that level as given by Table G-16a.

(2) The eight-hour time-weighted average sound level (TWA), in decibels, may be computed from the dose, in percent, by means of the formula: $TWA = 16.61 \log_{10} (D/100) + 90$. For an eight-hour workshift with the noise level constant over the entire shift, the TWA is equal to the measured sound level.

(3) A table relating dose and TWA is given in Section II.

TABLE G-16a

A-weighted sound level, L (decibel)	Reference duration, T (hour)
80	32
81	27.9
82	24.3
83	21.1
84	18.4
85	16
86	13.9
87	12.1
88	10.6
89	9.2
90	8
91	7.0
92	6.1
93	5.3
94	4.6
95	4
96	3.5
97	3.0
98	2.6
99	2.3
100	2
101	1.7
102	1.5
103	1.3
104	1.1
105	1
106	0.87

TABLE G-16a—Continued

A-weighted sound level, L (decibel)	Reference duration, T (hour)
107	0.76
108	0.66
109	0.57
110	0.5
111	0.44
112	0.38
113	0.33
114	0.29
115	0.25
116	0.22
117	0.19
118	0.16
119	0.14
120	0.125
121	0.11
122	0.095
123	0.082
124	0.072
125	0.063
126	0.054
127	0.047
128	0.041
129	0.036
130	0.031

In the above table the reference duration, T, is computed by

$$T = \frac{8}{2^{(L-90)/5}}$$

where L is the measured A-weighted sound level.

II. Conversion Between "Dose" and "8-Hour Time-Weighted Average" Sound Level

Compliance with paragraphs (c)–(r) of this regulation is determined by the amount of exposure to noise in the workplace. The amount of such exposure is usually measured with an audiodosimeter which gives a readout in terms of "dose." In order to better understand the requirements of the amendment, dosimeter readings can be converted to an "8-hour time-weighted average sound level." (TWA).

In order to convert the reading of a dosimeter into TWA, see Table A-1, below. This table applies to dosimeters that are set by the manufacturer to calculate dose or percent exposure according to the relationships in Table G-16a. So, for example, a dose of 91 percent over an eight hour day results in a TWA of 89.3 dB, and, a dose of 50 percent corresponds to a TWA of 85 dB.

If the dose as read on the dosimeter is less than or greater than the values found in Table A-1, the TWA may be calculated by using the formula: $TWA = 16.61 \log_{10} (D/100) + 90$ where TWA = 8-hour time-weighted average sound level and D = accumulated dose in percent exposure.

TABLE A-1.—CONVERSION FROM "PERCENT NOISE EXPOSURE" OR "DOSE" TO "8-HOUR TIME-WEIGHTED AVERAGE SOUND LEVEL" (TWA)

Dose or percent noise exposure	TWA
10	73.4
15	76.3
20	78.4
25	80.0
30	81.3
35	82.4
40	83.4
45	84.2
50	85.0
55	85.7
60	86.3
65	86.9
70	87.4
75	87.9
80	88.4
81	88.5
82	88.6
83	88.7
84	88.7
85	88.8
86	88.9
87	89.0
88	89.1
89	89.2
90	89.2
91	89.3
92	89.4
93	89.5
94	89.6
95	89.6
96	89.7
97	89.8
98	89.9
99	89.9
100	90.0
101	90.1
102	90.1
103	90.2
104	90.3
105	90.4
106	90.4
107	90.5
108	90.6
109	90.6
110	90.7
111	90.8
112	90.8
113	90.9
114	90.9
115	91.1
116	91.1
117	91.1
118	91.2
119	91.3
120	91.3
125	91.6
130	91.9
135	92.2
140	92.4
145	92.7
150	92.9
155	93.2
160	93.4
165	93.6
170	93.8
175	94.0
180	94.2
185	94.4
190	94.6
195	94.8
200	95.0
210	95.4
220	95.7
230	96.0
240	96.3
250	96.6
260	96.9
270	97.2
280	97.4
290	97.7
300	97.9
310	98.2
320	98.4
330	98.6
340	98.8
350	99.0
360	99.2
370	99.4

TABLE A-1.—CONVERSION FROM "PERCENT NOISE EXPOSURE" OR "DOSE" TO "8-HOUR TIME-WEIGHTED AVERAGE SOUND LEVEL" (TWA)—Continued

Dose or percent noise exposure	TWA
380	99.6
390	99.8
400	100.0
410	100.2
420	100.4
430	100.5
440	100.7
450	100.8
460	101.0
470	101.2
480	101.3
490	101.5
500	101.6
510	101.8
520	101.9
530	102.0
540	102.2
550	102.3
560	102.4
570	102.6
580	102.7
590	102.8
600	102.9
610	103.0
620	103.2
630	103.3
640	103.4
650	103.5
660	103.6
670	103.7
680	103.8
690	103.9
700	104.0
710	104.1
720	104.2
730	104.3
740	104.4
750	104.5
760	104.6
770	104.7
780	104.8
790	104.9
800	105.0
810	105.1
820	105.2
830	105.3
840	105.4
850	105.4
860	105.5
870	105.6
880	105.7
890	105.8
900	105.8
910	105.9
920	106.0
930	106.1
940	106.2
950	106.2
960	106.3
970	106.4
980	106.5
990	106.5
999	106.6

Appendix B: Methods for Estimating the Adequacy of Hearing Protector Attenuation

This Appendix is Mandatory

For employees who have experienced a significant threshold shift, hearing protector attenuation must be sufficient to reduce employee exposure to a TWA of 85 dB. Employers must select one of the following methods by which to estimate the adequacy of hearing protector attenuation.

The most convenient method is the Noise Reduction Rating (NRR) developed by the Environmental Protection Agency (EPA). According to EPA regulation, the NRR must be shown on the hearing protector package. The NRR is then related to an individual worker's noise environment in order to assess the adequacy of the attenuation of a given hearing protector. This Appendix describes four methods of using the NRR to determine whether a particular hearing protector provides adequate protection within a given exposure environment. Selection among the four procedures is dependent upon the employer's noise measuring instruments.

Instead of using the NRR, employers may evaluate the adequacy of hearing protector attenuation by using one of the three methods developed by the National Institute for Occupational Safety and Health (NIOSH), which are described in the "List of Personal Hearing Protectors and Attenuation Data," HEW Publication No. 76-120, 1975, pages 21-37. These methods are known as NIOSH methods #1, #2 and #3. The NRR described below is a simplification of NIOSH method #2. The most complex method is NIOSH method #1, which is probably the most accurate method since it uses the largest amount of spectral information from the individual employee's noise environment. As in the case of the NRR method described below, if one of the NIOSH methods is used, the selected method must be applied to an individual's noise environment to assess the adequacy of the attenuation. Employers should be careful to take a sufficient number of measurements in order to achieve a representative sample for each time segment.

Note.—The employer must remember that calculated attenuation values reflect realistic values only to the extent that the protectors are properly fitted and worn.

When using the NRR to assess hearing protector adequacy, one of the following methods must be used:

(i) When using a dosimeter that is capable of C-weighted measurements:

(A) Obtain the employee's C-weighted dose for the entire workshift, and convert to TWA (see Appendix A, II).

(B) Subtract the NRR from the C-weighted TWA to obtain the estimated A-weighted TWA under the ear protector.

(ii) When using a dosimeter that is not capable of C-weighted measurements, the following method may be used:

(A) Convert the A-weighted dose to TWA (see Appendix A).

(B) Subtract 7 dB from the NRR.

(C) Subtract the remainder from the A-weighted TWA to obtain the estimated A-weighted TWA under the ear protector.

(iii) When using a sound level meter set to the A-weighting network:

(A) Obtain the employee's A-weighted TWA.

(B) Subtract 7 dB from the NRR, and subtract the remainder from the A-weighted TWA to obtain the estimated A-weighted TWA under the ear protector.

(iv) When using a sound level meter set on the C-weighting network:

(A) Obtain a representative sample of the C-weighted sound levels in the employee's environment.

(B) Subtract the NRR from the C-weighted average sound level to obtain the estimated A-weighted TWA under the ear protector.

(v) When using area monitoring procedures and a sound level meter set to the A-weighing network.

(A) Obtain a representative sound level for the area in question.

(B) Subtract 7 dB from the NRR and subtract the remainder from the A-weighted sound level for that area.

(vi) When using area monitoring procedures and a sound level meter set to the C-weighting network:

(A) Obtain a representative sound level for the area in question.

(B) Subtract the NRR from the C-weighted sound level for that area.

Appendix C: Audiometric Measuring Instruments

This Appendix is Mandatory

1. In the event that pulsed-tone audiometers are used, they shall have a tone on-time of at least 200 milliseconds.

2. Self-recording audiometers shall comply with the following requirements:

(A) The chart upon which the audiogram is traced shall have lines at positions corresponding to all multiples of 10 dB hearing level within the intensity range spanned by the audiometer. The lines shall be equally spaced and shall be separated by at least ¼ inch. Additional increments are optional. The audiogram pen tracings shall not exceed 2 dB in width.

(B) It shall be possible to set the stylus manually at the 10-dB increment lines for calibration purposes.

(C) The slewing rate for the audiometer attenuator shall not be more than 6 dB/sec except that an initial slewing rate greater than 6 dB/sec is permitted at the beginning of each new test frequency, but only until the second subject response.

(D) The audiometer shall remain at each required test frequency for 30 seconds (± 3 seconds). The audiogram shall be clearly marked at each change

of frequency and the actual frequency change of the audiometer shall not deviate from the frequency boundaries marked on the audiogram by more than ± 3 seconds.

(E) It must be possible at each test frequency to place a horizontal line segment parallel to the time axis on the audiogram, such that the audiometric tracing crosses the line segment at least six times at that test frequency. At each test frequency the threshold shall be the average of the midpoints of the tracing excursions.

Appendix D: Audiometric Test Rooms

This Appendix is Mandatory

Rooms used for audiometric testing shall not have background sound pressure levels exceeding those in Table D–1 when measured by equipment conforming at least to the Type 2 requirements of American National Standard Specification for Sound Level Meters, S1.4–1971 (R1976), and to the Class II requirements of American National Standard Specification for Octave, Half-Octave, and Third-Octave Band Filter Sets, S1.11–1971 (R1976).

TABLE D–1.—MAXIMUM ALLOWABLE OCTAVE-BAND SOUND PRESSURE LEVELS FOR AUDIOMETRIC TEST ROOMS

Octave-band center frequency (Hz)	500	1000	2000	4000	8000
Sound pressure level (dB)	40	40	47	57	62

Appendix E: Acoustic Calibration of Audiometers

This Appendix is Mandatory

Audiometer calibration shall be checked acoustically, at least annually, according to the procedures described in this Appendix. The equipment necessary to perform these measurements is a sound level meter, octave-band filter set, and a National Bureau of Standards 9A coupler. In making these measurements, the accuracy of the calibrating equipment shall be sufficient to determine that the audiometer is within the tolerances permitted by American Standard Specification for Audiometers, S3.6–1969.

(1) Sound Pressure Output Check

A. Place the earphone coupler over the microphone of the sound level meter and place the earphone on the coupler.

B. Set the audiometer's hearing threshold level (HTL) dial to 70 dB.

C. Measure the sound pressure level of the tones that each test frequency from 500 Hz through 6000 Hz for each earphone.

D. At each frequency the readout on the sound level meter should correspond to the levels in Table E–1 or Table E–2, as appropriate, for the type of earphone, in the column entitled "sound level meter reading."

(2) Linearity Check

A. With the earphone in place, set the frequency to 1000 Hz and the HTL dial on the audiometer to 70 dB.

B. Measure the sound levels in the coupler at each 10-dB decrement from 70 dB to 10 dB, noting the sound level meter reading at each setting.

C. For each 10-dB decrement on the audiometer the sound level meter should indicate a corresponding 10 dB decrease.

D. This measurement may be made electrically with a voltmeter connected to the earphone terminals.

(3) Tolerances

When any of the measured sound levels deviate from the levels in Table E–1 or Table E–2 by ± 3 dB at any test frequency between 500 and 3000 Hz, 4 dB at 4000 Hz, or 5 dB at 6000 Hz, an exhaustive calibration is advised. An exhaustive calibration is required if the deviations are greater than 10 dB at any test frequency.

TABLE E–1.—REFERENCE THRESHOLD LEVELS FOR TELEPHONICS—TDH–39 EARPHONES

Frequency, Hz	Reference threshold level for TDH–39 earphones, dB	Sound level meter reading, dB
500	11.5	81.5
1000	7	77
2000	9	79
3000	10	80
4000	9.5	79.5
6000	15.5	85.5

TABLE E–2.—REFERENCE THRESHOLD LEVELS FOR TELEPHONICS—TDH–49 EARPHONES

Frequency, Hz	Reference threshold level for TDH–49 earphones, dB	Sound level meter reading, dB
500	13.5	83.5
1000	7.5	77.5
2000	11	81.0
3000	9.5	79.5
4000	10.5	80.5
6000	13.5	83.5

Appendix F: Calculations and Application of Age Corrections to Audiograms

This Appendix Is Non-Mandatory

In determining whether a standard threshold shift has occurred, allowance may be made for the contribution of aging to the change in hearing level by adjusting the most recent audiogram. If the employer chooses to adjust the audiogram, the employer shall follow the procedure described below. This procedure and the age correction tables were developed by the National Institute for Occupational Safety and Health in the criteria document entitled "Criteria for a Recommended Standard . . . Occupational Exposure to Noise," ((HSM)–11001).

For each audiometric test frequency:

(i) Determine from Tables F–1 or F–2 the age correction values for the employee by:

(A) Finding the age at which the most recent audiogram was taken and recording the corresponding values of age corrections at 1000 Hz through 6000 Hz;

(B) Finding the age at which the baseline audiogram was taken and recording the corresponding values of age corrections at 1000 Hz through 6000 Hz.

(ii) Subtract the values found in step (i)(A) from the value found in step (i)(B).

(iii) The differences calculated in step (ii) represented that portion of the change in hearing that may be due to aging.

Example: Employee is a 32-year-old male. The audiometric history for his right ear is shown in decibels below.

Employee's age	Audiometric test frequency (Hz)				
	1000	2000	3000	4000	6000
26	10	5	5	10	5
*27	0	0	0	5	5
28	0	0	0	10	5
29	5	0	5	15	5
30	0	5	10	20	10
31	5	10	20	15	15
*32	5	10	10	25	20

The audiogram at age 27 is considered the baseline since it shows the best hearing threshold levels. Asterisks have been used to identify the baseline and most recent audiogram. A threshold shift of 20 dB exists at 4000 Hz between the audiograms taken at ages 27 and 32.

(The threshold shift is computed by subtracting the hearing threshold at age 27, which was 5, from the hearing threshold at age 32, which is 25). A retest audiogram has confirmed this shift. The contribution of aging to this change in hearing may be estimated in the following manner:

Go to Table F–1 and find the age correction values (in dB) for 4000 Hz at age 27 and age 32.

	Frequency (Hz)				
	1000	2000	3000	4000	6000
Age 32	6	5	7	10	14
Age 27	5	4	6	7	11
Difference	1	1	1	3	3

The difference represents the amount of hearing loss that may be attributed to aging in the time period between the baseline audiogram and the most recent audiogram. In this example, the difference at 4000 Hz is 3 dB. This value is subtracted from the hearing level at 4000 Hz, which in the most recent audiogram is 25, yielding 22 after adjustment. Then the hearing threshold in the baseline audiogram at 4000 Hz (5) is subtracted from the adjusted annual audiogram hearing threshold at 4000 Hz (22). Thus the age-corrected threshold shift would be 17 dB (as opposed to a threshold shift of 20 dB without age correction).

TABLE F-1.—AGE CORRECTION VALUES IN DECIBELS FOR MALES

Years	Audiometric Test Frequencies (Hz)				
	1000	2000	3000	4000	6000
20 or younger	5	3	4	5	8
21	5	3	4	5	8
22	5	3	4	5	8
23	5	3	4	6	9
24	5	3	5	6	9
25	5	3	5	7	10
26	5	4	5	7	10
27	5	4	6	7	11
28	6	4	6	8	11
29	6	4	6	8	12
30	6	4	6	9	12
31	6	4	7	9	13
32	6	5	7	10	14
33	6	5	7	10	14
34	6	5	8	11	15
35	7	5	8	11	15
36	7	5	9	12	16
37	7	6	9	12	17
38	7	6	9	13	17
39	7	6	10	14	18
40	7	6	10	14	19
41	7	6	10	14	20
42	8	7	11	16	20
43	8	7	12	16	21
44	8	7	12	17	22
45	8	7	13	18	23
46	8	8	13	19	24
47	8	8	14	19	24
48	9	8	14	20	25
49	9	9	15	21	26
50	9	9	16	22	27
51	9	9	16	23	28
52	9	10	17	24	29
53	9	10	18	25	30
54	10	10	18	26	31
55	10	11	19	27	32
56	10	11	20	28	34
57	10	11	21	29	35
58	10	12	22	31	36
59	11	12	22	32	37
60 or older	11	13	23	33	38

TABLE F-2.—AGE CORRECTION VALUES IN DECIBELS FOR FEMALES

Years	Audiometric Test Frequencies (Hz)				
	1000	2000	3000	4000	6000
20 or younger	7	4	3	3	6
21	7	4	4	3	6

TABLE F-2.—AGE CORRECTION VALUES IN DECIBELS FOR FEMALES—Continued

Years	Audiometric Test Frequencies (Hz)				
	1000	2000	3000	4000	6000
22	7	4	4	4	6
23	7	5	4	4	7
24	7	5	4	4	7
25	8	5	4	4	7
26	8	5	5	4	8
27	8	5	5	5	8
28	8	5	5	5	8
29	8	5	5	5	9
30	8	6	5	5	9
31	8	6	6	5	9
32	9	6	6	6	10
33	9	6	6	6	10
34	9	6	6	6	10
35	9	6	7	7	11
36	9	7	7	7	11
37	9	7	7	7	12
38	10	7	7	7	12
39	10	7	8	8	12
40	10	7	8	8	13
41	10	8	8	8	13
42	10	8	9	9	13
43	11	8	9	9	14
44	11	8	9	9	14
45	11	8	10	10	15
46	11	9	10	10	15
47	11	9	10	11	16
48	12	9	11	11	16
49	12	9	11	11	16
50	12	10	11	12	17
51	12	10	12	12	17
52	12	10	12	13	18
53	13	10	13	13	18
54	13	11	13	14	19
55	13	11	14	14	19
56	13	11	14	15	20
57	13	11	15	15	20
58	14	12	15	16	21
59	14	12	16	16	21
60 or older	14	12	16	17	22

Appendix G: Monitoring Noise Levels Non-Mandatory Informational Appendix

This appendix provides information to help employers comply with the noise monitoring obligations that are part of the hearing conservation amendment.

What is the purpose of noise monitoring?

This revised amendment requires that employees be placed in a hearing conservation program if they are exposed to average noise levels of 85 dB or greater during an 8 hour workday. In order to determine if exposures are at or above this level, it may be necessary to measure or monitor the actual noise levels in the workplace and to estimate the noise exposure or "dose" received by employees during the workday.

When is it necessary to implement a noise monitoring program?

It is not necessary for every employer to measure workplace noise. Noise monitoring or measuring must be conducted only when exposures are at or above 85 dB. Factors which suggest that noise exposures in the workplace may be at this level include employee complaints about the loudness of noise, indications that employees are losing their hearing, or noisy conditions which make normal conversation difficult. The employer should also consider any information available regarding noise emitted from specific machines. In addition, actual workplace noise measurements can suggest whether or not a monitoring program should be initiated.

How is noise measured?

Basically, there are two different instruments to measure noise exposures: the sound level meter and the dosimeter. A sound level meter is a device that measures the intensity of sound at a given moment. Since sound level meters provide a measure of sound intensity at only one point in time, it is generally necessary to take a number of measurements at different times during the day to estimate noise exposure over a workday. If noise levels fluctuate, the amount of time noise remains at each of the various measured levels must be determined.

To estimate employee noise exposures with a sound level meter it is also generally necessary to take several measurements at different locations within the workplace. After appropriate sound level meter readings are obtained, people sometimes draw "maps" of the sound levels within different areas of the workplace. By using a sound level "map" and information on employee locations throughout the day, estimates of individual exposure levels can be developed. This measurement method is generally referred to as *area* noise monitoring.

A dosimeter is like a sound level meter except that it stores sound level measurements and integrates these measurements over time, providing an average noise exposure reading for a given period of time, such as an 8-hour workday. With a dosimeter, a microphone is attached to the employee's clothing and the exposure measurement is simply read at the end of the desired time period. A reader may be used to read-out the dosimeter's measurements. Since the dosimeter is worn by the employee, it measures noise levels in those locations in which the employee travels. A sound level meter can also be positioned within the immediate vicinity of the exposed worker to obtain an individual exposure estimate. Such procedures are generally referred to as *personal* noise monitoring.

Area monitoring can be used to estimate noise exposure when the noise levels are relatively constant and employees are not mobile. In workplaces where employees move about in different areas or where the noise intensity tends to fluctuate over time, noise exposure is generally more accurately estimated by the personal monitoring approach.

In situations where personal monitoring is appropriate, proper positioning of the microphone is necessary to obtain accurate measurements. With a dosimeter, the microphone is generally located on the shoulder and remains in that position for the entire workday. With a sound level meter, the microphone is stationed near the employee's head, and the instrument is usually held by an individual who follows the employee as he or she moves about.

Manufacturer's instructions, contained in dosimeter and sound level meter operating manuals, should be followed for calibration and maintenance. To ensure accurate results, it is considered good professional practice to calibrate instruments before and after each use.

How often is it necessary to monitor noise levels?

The amendment requires that when there are significant changes in machinery or production processes that may result in increased noise levels, remonitoring must be conducted to determine whether additional employees need to be included in the hearing conservation program. Many companies choose to remonitor periodically (once every year or two) to ensure that all exposed employees are included in their hearing conservation programs.

Where can equipment and technical advice be obtained?

Noise monitoring equipment may be either purchased or rented. Sound level meters cost about $500 to $1,000, while dosimeters range in price from about $750 to $1,500. Smaller companies may find it more economical to rent equipment rather than to purchase it. Names of equipment suppliers may be found in the telephone book (Yellow Pages) under headings such as: "Safety Equipment," "Industrial Hygiene," or "Engineers-Acoustical." In addition to providing information on obtaining noise monitoring equipment, many companies and individuals included under such listings can provide professional advice on how to conduct a valid noise monitoring program. Some audiological testing firms and industrial hygiene firms also provide noise monitoring services. Universities with audiology, industrial hygiene, or acoustical engineering departments may also provide information or may be able to help employers meet their obligations under this amendment.

Free, on-site assistance may be obtained from OSHA-supported state and private consultation organizations. These safety and health consultative entities generally give priority to the needs of small businesses. See the attached directory for a listing of organizations to contact for aid.

OSHA Onsite Consultation Project Directory

State	Office and address	Contact
Alabama	Alabama Consultation Program, P.O. Box 6005, University, Alabama 35486	(205) 348-7136, Mr. William Weems, Director.
Alaska	State of Alaska, Department of Labor, Occupational Safety & Health, 3301 Eagle St., Pouch 7-022, Anchorage, Alaska 99510.	(907) 276-5013, Mr. Stan Godsoe, Project Manager (Air Mail).
American Samoa	Service not yet available.	
Arizona	Consultation and Training, Arizona Division of Occupational Safety and Health, P.O. Box 19070, 1824 W. Adams, Phoenix, Ariz. 85005.	(602) 255-5795, Mr. Thomas Ramaley, Manager.
Arkansas	OSHA Consultation, Arkansas Department of Labor, 1022 High St., Little Rock, Ark. 72202	(501) 371-2992, Mr. George Smith, Project Director.
California	CAL/OSHA Consultation Service, 2nd Floor, 525 Golden Gate Avenue, San Francisco, Calif. 94102.	(415) 557-2870, Mr. Emmett Jones, Chief.
Colorado	Occupational Safety & Health Section, Colorado State University, Institute of Rural Environmental Health, 110 Veterinary Science Building, Fort Collins, Colo. 80523.	(303) 491-6151, Dr. Roy M. Buchan, Project Director.
Connecticut	Division of Occupational Safety & Health, Connecticut Department of Labor, 200 Folly Brook Boulevard, Wethersfield, Conn. 06109.	(203) 566-4550, Mr. Leo Alix, Director.
Delaware	Delaware Department of Labor, Division of Industrial Affairs, 820 North French Street, 6th Floor, Wilmington, Del. 19801.	(302) 571-3908, Mr. Bruno Salvadori, Director.
District of Columbia	Occupational Safety & Health Division, District of Columbia, Department Employment Services, Office of Labor Standards, 2900 Newton Street NE., Washington, D.C. 20018.	(202) 832-1230, Mr. Lorenzo M. White, Acting Associate Director.
Florida	Department of Labor & Employment Security, Bureau of Industrial Safety and Health, LaFayette Building, Room 204, 2551 Executive Center Circle West, Tallahassee, Fla. 32301.	(904) 488-3044, Mr. John C. Glenn, Administrator.
Georgia	Economic Development Division, Technology and Development Laboratory, Engineering Experiment Station, Georgia Institute of Technology, Atlanta, Ga. 30332.	(404) 894-3806, Mr. William C. Howard, Assistant to Director, Mr. James Burson, Project Manager.
Guam	Department of Labor, Government of Guam, 23548 Guam Main Facility, Agana, Guam 96921	(671) 772-6291, Joe R. San Agustin, Director.
Hawaii	Education and Information Branch, Division of Occupational Safety and Health, Suite 910, 677 Ala Moana, Honolulu, Hawaii 96813.	(808) 548-2511, Mr. Don Alper, Manager (Air Mail).
Idaho	OSHA Onsite Consultation Program, Boise State University, Community and Environmental Health, 1910 University Drive, Boise, Idaho 83725.	(208) 385-3929, Dr. Eldon Edmundson, Director.
Illinois	Division of Industrial Services, Dept. of Commerce and Community Affairs, 310 S. Michigan Avenue, 10 Floor, Chicago, Ill. 60601.	(800) 972-4140/4216 (Toll-free in State), (312) 793-3270, Mr. Stan Czwinski, Assistant Director.
Iowa	Bureau of Labor, 307 E. Seventh Street, Des Moines, Iowa 50319	(515) 281-3606, Mr. Allen J. Meier, Commissioner.
Indiana	Bureau of Safety, Education and Training, Indiana Division of Labor, 1013 State Office Building, Indianapolis, Indiana 46204.	(317) 633-5845, Mr. Harold Mills, Director.
Kansas	Kansas Dept. of Human Resources, 401 Topeka Ave., Topeka, Kans. 66603	(913) 296-4066, Mr. Jerry Abbott, Secretary.
Kentucky	Education and Training, Occupational Safety and Health, Kentucky Department of Labor, 127 Building, 127 South, Frankfort, Ky. 40601.	(502) 564-6895, Mr. Larry Potter, Director.
Louisiana	No services available as yet (Pending FY 83).	
Maine	Division of Industrial Safety, Maine Dept. of Labor, Labor Station 45, State Office Building, Augusta, Maine 04333.	(207) 289-3331, Mr. Lester Wood, Director.
Maryland	Consultation Services, Division of Labor & Industry, 501 St. Paul Place, Baltimore, Maryland 21202	(301) 659-4210, Ms. Ileana O'Brien, Project Manager, 7(c)(1) Agreement.
Massachusetts	Division of Industrial Safety, Massachusetts Department of Labor and Industries, 100 Cambridge Street, Boston, Massachusetts 02202.	(617) 727-3567, Mr. Edward Noseworthy, Project Director.
Michigan (Health)	Special Programs Section, Division of Occupational Health, Michigan Dept. of Public Health, 3500 N. Logan, Lansing, Mich. 48909.	(517) 373-1410, Mr. Irving Davis, Chief.
Michigan (Safety)	Safety Education & Training Division Bureau of Safety and Regulation, Michigan Department of Labor, 7150 Harris Drive, Box 30015, Lansing, Michigan 48909.	(517) 322-1809, Mr. Alan Harvie, Chief.
Minnesota	Training and Education Unit, Department of Labor and Industry, 5th Floor, 444 Lafayette Road, St. Paul, Minn. 55101.	(612) 296-2973, Mr. Timothy Tierney, Project Manager.
Mississippi	Division of Occupational Safety and Health, Mississippi State Board of Health, P.O. Box 1700, Jackson, Mississippi 39205.	(601) 982-6315, Mr. Henry L. Laird, Director.
Missouri	Missouri Department of Labor and Industrial Relations, 722 Jefferson Street, Jefferson City, Missouri 65101.	1-(800) 392-0208, (314) 751-3403, Ms. Paula Smith, Mr. Jim Brake.
Montana	Montana Bureau of Safety & Health, Division of Workers Compensation, 815 Front Street, Helena, Montana 59601.	(406) 449-3402, Mr. Ed Gatzemeier, Chief.
Nebraska	Nebraska Department of Labor, State House Station, State Capitol, P.O. Box 94600, Lincoln, Nebraska 68509.	475-8451 Ext. 258, Mr. Joseph Carroll, Commissioner.

OSHA ONSITE CONSULTATION PROJECT DIRECTORY—Continued

State	Office and address	Contact
Nevada	Department of Occupational Safety and Health, Nevada Industrial Commission, 515 E. Musser Street, Carson City, Nev. 89714.	(702) 885-5240, Mr. Allen Travenkner, Director.
New Hampshire	For information contact	Office of Consultation Programs, Room N3472 200 Constitution Avenue, N.W. Washington, D.C. 20210, Phone: (202) 523-8985.
New Jersey	New Jersey Department of Labor and Industry Division of Work Place Standards, CN-054, Trenton, New Jersey 08625.	(609) 292-2313, FTS-8-477-2313, Mr. William Clark, Assistant Commissioner.
New Mexico	OSHA Consultation, Health and Environment Department, Environmental Improvement Division, Occupational Health & Safety Section, 4215 Montgomery Boulevard, NE., Albuquerque, New Mexico 87109.	(505) 842-3387, Mr. Albert M. Stevens, Project Manager.
New York	Division of Safety and Health, New York State Department of Labor, 2 World Trade Center, Room 6995, New York, New York 10047.	(212) 488-7746/7, Mr. Joseph Alleva, Project Manager, DOSH.
North Carolina	Consultation Services, North Carolina Department of Labor, 4 West Edenton Street, Raleigh, N.C. 27601.	(919) 733-4685, Mr. David Pierce, Director.
North Dakota	Division of Environmental Research, Department of Health, Missouri Office Building, 1200 Missouri Avenue, Bismarck, N. Dak. 58505.	(701) 224-2348, Mr. Jay Crawford, Director.
Ohio	Department of Industrial Relations, Division of Onsite Consultation, P.O. Box 825, 2323 5th Avenue, Columbus, Ohio 43216.	(800) 282-1425 (Toll-free in State), (614) 466-7485, Mr. Andrew Doehrel, Project Manager.
Oklahoma	OSHA Division, Oklahoma Department of Labor, State Capitol, Suite 118, Oklahoma City, Okla. 73105.	(405) 521-2461, Mr. Charles W. McGlon, Director.
Oregon	Consultative Section, Department of Workers' Compensation, Accident Prevention Division, Room 102, Building 1, 2110 Front Street NE., Salem, Oregon 97310.	(503) 378-2690, Mr. Jack Buckland, Supervisor.
Pennsylvania	For information contact	Office of Consultation Programs, Room N3472, 200 Constitution Avenue NW., Washington, D.C. 20210, Phone: (202) 523-8985.
Puerto Rico	Occupational Safety & Health, Puerto Rico Department of Labor and Human Resources, 505 Munoz Rivera Ave., 21st Floor, Hato Rey, Puerto Rico 00919.	(809) 754-2134, Mr. John Crique, Assistant Secretary. (Air Mail).
Rhode Island	Division of Occupational Health, Rhode Island Department of Health, The Cannon Building, 206 Health Department Building, Providence, R.I. 02903.	(401) 277-2436, Mr. James E. Hickey, Chief.
South Carolina	Consultation and Monitoring, South Carolina Department of Labor, P.O. Box 11329, Columbia, S.C. 29211.	(803) 758-8921, Mr. Robert Peck, Director, 7(c)(1), Project.
South Dakota	South Dakota Consultation Program, South Dakota State University, S.T.A.T.E.-Engineering Extension, 201 Pugsley Center-SDSO, Brookings, S. Dak. 57007.	(605) 688-4101, Mr. James Ceglian, Director.
Tennessee	OSHA Consultative Services, Tennessee Department of Labor, 2nd Floor, 501 Union Building, Nashville, Tennessee 37219.	(615) 741-2793, Mr. L. H. Craig Director.
Texas	Division of Occupational Safety and State Safety Engineer, Texas Department of Health and Resources, 1100 West 49th Street, Austin, Texas 78756.	(512) 458-7287, Mr. Walter G. Martin, P.E. Director.
Trust Territories	Service not yet available.	
Utah	Utah Job Safety and Health Consultation Service, Suite 4004, Crane Building, 307 West 200 South, Salt Lake City, Utah 84101.	(801) 533-7927/8/9, Mr. H. M. Bergeson, Project Director.
Vermont	Division of Occupational Safety and Health, Vermont Department of Labor and Industry, 116 State Street, Montpelier, Vt. 05602.	(802) 828-2765, Mr. Robert Mcleod, Project Director.
Virginia	Department of Labor and Industry, P.O. Box 12064, 205 N. 4th Street, Richmond, Va. 23241	(804) 786-5875, Mr. Robert Beard, Commissioner.
Virgin Islands	Division of Occupational Safety and Health, Virgin Islands Department of Labor, Lagoon Street, Room 207, Frederiksted, Virgin Islands 00840.	(809) 772-1315, Mr. Louis Ulanos, Deputy Director-DOSH.
Washington	Department of Labor and Industry, P.O. Box 207, Olympia, Wash. 98504	(206) 753-6500, Mr. James Sullivan, Assistant Director.
West Virginia	West Virginia Department of Labor, Room 451B, State Capitol, 1900 Washington Street, Charleston, W. Va. 25305.	FTS 8-885-7890, Mr. Lawrence Barker, Commissioner.
Wisconsin (Health)	Section of Occupational Health, Department of Health and Social Services, P.O. Box 309, Madison, Wisconsin 53701.	(608) 266-0417, Ms. Patricia Natzke, Acting Chief.
Wisconsin (Safety)	Division of Safety and Buildings, Department of Industry, Labor and Human Relations, 1570 E. Moreland Blvd., Waukesha, Wis. 53186.	(414) 544-8686, Mr. Richard Michalski, Supervisor.
Wyoming	Wyoming Occupational Health and Safety Department, 200 East 8th Avenue, Cheyenne, Wyo. 82002.	(307) 777-7786, Mr. Donald Owsley, Health and Safety Administrator.

Appendix H: Availability of Referenced Documents

Paragraphs (c) through (o) of 29 CFR 1910.95 and the accompanying appendices contain provisions which incorporate publications by reference. Generally, the publications provide criteria for instruments to be used in monitoring and audiometric testing. These criteria are intended to be mandatory when so indicated in the applicable paragraphs of Section 1910.95 and appendices.

It should be noted that OSHA does not require that employers purchase a copy of the referenced publications. Employers, however, may desire to obtain a copy of the referenced publications for their own information.

The designation of the paragraph of the standard in which the referenced publications appear, the titles of the publications, and the availability of the publications are as follows:

Paragraph designation	Referenced publication	Available from—
Appendix B	"List of Personal Hearing Protectors and Attenuation Data," HEW Pub. No. 76-120, 1975. NTIS-PB267461.	National Technical Information Service, Port Royal Road, Springfield, VA 22161.
Appendix D	"Specification for Sound Level Meters," S1.4-1971 (R1976).	American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.
§ 1910.95(k)(2), appendix E	"Specifications for Audiometers," S3.6-1969.	American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.
Appendix D	"Specification for Octave, Half-Octave and Third-Octave Band Filter Sets," S1.11-1971 (R1976).	Back Numbers Department, Dept. STD, American Institute of Physics, 333 E. 45th St., New York, NY 10017; American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

The referenced publications (or a microfiche of the publications) are available for review at many universities and public libraries throughout the country. These publications may also be examined at the OSHA Technical Data Center, Room N2439, United States Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, (202) 523–9700 or at any OSHA Regional Office (see telephone directories under United States Government—Labor Department).

Appendix I: Definitions

These definitions apply to the following terms as used in paragraphs (c) through (n) of 29 CFR 1910.95.

Action level—An 8-hour time-weighted average of 85 decibels measured on the A-scale, slow response, or equivalently, a dose of fifty percent.

Audiogram—A chart, graph, or table resulting from an audiometric test showing an individual's hearing threshold levels as a function of frequency.

Audiologist—A professional, specializing in the study and rehabilitation of hearing, who is certified by the American Speech-Language-Hearing Association or licensed by a state board of examiners.

Baseline audiogram—The audiogram against which future audiograms are compared.

Criterion sound level—A sound level of 90 decibels.

Decibel (dB)—Unit of measurement of sound level.

Hertz (Hz)—Unit of measurement of frequency, numerically equal to cycles per second.

Medical pathology—A disorder or disease. For purposes of this regulation, a condition or disease affecting the ear, which should be treated by a physician specialist.

Noise dose—The ratio, expressed as a percentage, of (1) the time integral, over a stated time or event, of the 0.6 power of the measured SLOW exponential time-averaged, squared A-weighted sound pressure and (2) the product of the criterion duration (8 hours) and the 0.6 power of the squared sound pressure corresponding to the criterion sound level (90 dB).

Noise dosimeter—An instrument that integrates a function of sound pressure over a period of time in such a manner that it directly indicates a noise dose.

Otolaryngologist—A physician specializing in diagnosis and treatment of disorders of the ear, nose and throat.

Representative exposure—Measurements of an employee's noise dose or 8-hour time-weighted average sound level that the employers deem to be representative of the exposures of other employees in the workplace.

Sound level—Ten times the common logarithm of the ratio of the square of the measured A-weighted sound pressure to the square of the standard reference pressure of 20 micropascals. Unit: decibels (dB). For use with this regulation, SLOW time response, in accordance with ANSI S1.4–1971 (R1976), is required.

Sound level meter—An instrument for the measurement of sound level.

Time-weighted average sound level—That sound level, which if constant over an 8-hour exposure, would result in the same noise dose as is measured.

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federal register

Tuesday
March 8, 1983

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Surface Coal Mining and Reclamation Operations; Initial and Permanent Regulatory Programs; Use of Explosives

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 715, 780, 816, and 817

Surface Coal Mining and Reclamation Operations; Initial and Permanent Regulatory Programs; Use of Explosives

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

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is amending its rules governing the use of explosives. The rules revise the requirements relating to blasting standards, preblasting surveys, airblast, ground vibration and flyrock, monitoring of blasts, and blast design. Final rules are adopted for the initial regulatory program, and the permanent regulatory program. The rules govern the blasts associated with surface and underground mines. The effect of the rule is to provide increased flexibility to design professionals to meet the regulatory performance standards contained in this rule.

EFFECTIVE DATE: April 7, 1983.

FOR FURTHER INFORMATION CONTACT: Arthur Anderson, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Ave., NW., Washington, DC 20240; 202-343-5954.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Discussion of Rules Adopted and Responses to Comments.
III. Procedural Matters.

I. Background.

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (the Act), sets forth initial regulatory procedures, permit requirements, and performance standards in Sections 502(c), 507(g), and 515(b)(15), respectively, governing the use of explosives in surface coal mining operations. Section 516 provides performance standards governing the surface effects of underground mining. Rules implementing those sections were published by OSM at 42 FR 62639 (December 13, 1977) under the initial regulatory program (30 CFR 715.19) and at 44 FR 14901 (March 13, 1979) under the permanent regulatory program (30 CFR 780.13, 816.11, 816.61-816.68, 817.11, and 817.61-817.68).

In litigation over the initial program rules, the U.S. Court of Appeals for the District of Columbia issued a decision on May 2, 1980. *In re: Surface Mining Regulation Litigation*, 627 F. 2d 1346 (D.C. Cir. 1980). That decision addressed two blasting issues: (1) The 1,000-foot limitation on blasting near houses, schools, and other buildings in § 715.19(e)(1)(vii), and (2) the 1.0-inch-per-second limitation on particle velocity produced by blasting in § 715.19(e)(2)(ii). The court ruled that the 1,000-foot limit was not authorized by Sections 522(e) (4) and (5) of the Act and that the 1.0-inch-per-second vibration limit was arbitrary and capricious because it lacked technical support.

On May 16, 1980, in litigation over the permanent program rules, the U.S. District Court for the District of Columbia remanded the 1,000-foot limitation on blasting in § 816.65(f). *In re: Permanent Surface Mining Regulation Litigation*, No. 79-1144 (D.D.C. May 16, 1980). The court did not invalidate the 1.0-inch-per-second vibration limitation, but at footnote 19 in its opinion the court recognized that the court of appeals had invalidated a similar provision in § 715.19(e)(2)(ii) in the initial program rules. To implement the court's decision, §§ 816.65(f) and 817.65(f) were suspended by notice at 45 FR 51549 (August 4, 1980).

In response to these decisions, amendments to the blasting rules were proposed at 46 FR 6982 (January 22, 1981). These proposed rules were later withdrawn, by notice at 46 FR 32455 (June 23, 1981) to allow OSM to undertake a more general review of all the blasting rules under the permanent regulatory program. On March 24, 1982, OSM proposed to amend many of the rules governing the use of explosives under the initial and permanent regulatory programs (47 FR 12760).

OSM today adopts many of the rules proposed on March 24, 1982. Final rules are adopted with regard to the use of explosives under the initial regulatory program (§ 715.19). Final rules are also adopted under the permanent regulatory program for surface (§§ 816.11 and 816.61-816.68) and underground (§§ 817.11 and 817.61-817.68) mines and with regard to blasting plans (§ 780.13) for surface mines.

II. Discussion of Rules Adopted and Responses to Comments

OSM received numerous comments on the proposed rules. Although public hearings were scheduled to be held in Washington, D.C.; Pittsburgh, Pa.; and Denver, Colo., no one requested the opportunity to speak at any of these hearings; therefore they were not held. Two requests for public meetings were filed. Meetings were held on June 9, 1982, in Washington, D.C., and on May 4, 1982, in Indianapolis, Ind.

Summaries of each of those meetings have been included in the Administrative Record.

The rules adopted today place increased responsibility on design professionals, such as certified blasters and blast vibration experts, in establishing the design standards to meet the regulatory performance standards contained herein. Those operators staying within the approved limits, complying with approved performance standards, and maintaining a responsible relationship with surrounding residents will be able to operate without additional constraint.

Technical References. In promulgating the previous permanent program rules governing blasting, OSM analyzed the technical references which were available through the fall of 1978. Those materials are listed at 44 FR 15179. OSM relied upon those references, as well as the following additional and, in some cases, more recent technical documents in the development of these revised rules:

Bollinger, G. A., 1971, Blast vibration analysis: Southern Illinois University Press, Carbondale and Edwardsville, 132 pp.

Braile, L. W., Sexton, J. L., Martindale, K. W., and Chiang, C. S., 1982, Seismic wave generation and preparation from coal mine blasts at the Wright mine, Warrick County, Indiana: Prepared by Department of Geosciences and Center for Earthquake Engineering and Ground Motion Studies, Purdue University, for U.S. Office of Surface Mining under contract J6211205, 344 pp.

Hemphill, Gary B., 1981, Blasting operations: McGraw-Hill Book Co., New York City, 258 pp.

Medearis, Kenneth, 1976, The development of rational damage criteria for low-rise structures subjected to blasting vibrations: National Crushed Stone Association, Washington, D.C., 94 pp.

Roth, Julius, Britton, K. C., Campbell, R. W., Ketler, W. R., 1977, Evaluation of surface Mining blasting procedures: Prepared by Management Science Associates for U.S. Bureau of Mines under contract J0366017, 152 pp.

Siskind, D. E., Stachura, V. J., Stagg, M. S., and Kopp, J. W., 1980, Structure response and damage produced by airblast from surface mining: U.S. Bureau of Mines Report of Investigations RI8485, 11 pp.

Siskind, D. E., Stagg, M. S., Stachura, V. J., 1979, Safe ground vibration and airblast criteria: 51st Annual Meeting, Eastern Section Seismological Society of America, October 1979, Blacksburg, Va.

Siskind, D. E., Stagg, M. S., Kopp, J. W., Dowding, C. H., 1980, Structure response and damage produced by ground vibration from surface mine blasting: U.S. Bureau of Mines Report of Investigations RI8507, 74 pp.

Stachura, V. J., Siskind, D. E., and Engler, A. J., 1981, Airblast instrumentation and measurement techniques for surface mine blasting: U.S. Bureau of Mines Report of Investigations RI8508, 53 pp.

Stagg, M. S., and Engler, A. J., 1980, Measurement of blast-induced ground vibration and seismograph calibration: U.S. Bureau of Mines Report of Investigations RI8506, 62 pp.

Swedish Detonic Research Foundation, 1978, Annual Report 1978: 14 pp.

U.S. Bureau of Mines, 1971, Blasting vibrations and their effects on structures: Bulletin 656, 105 pp.

Section 715.19

OSM proposed three options for amending 30 CFR 715.19(e)(2), which contains those parts of the initial regulatory program governing ground vibration. OSM is adopting a hybrid of the three options.

Comments on these three options and the ground vibration rule adopted today are discussed later in this rulemaking in conjunction with the rules adopted at § 816.67(d).

In its proposed rule OSM neglected to propose a rule comparable to previous § 715.19(e)(2)(iii), which made the maximum peak-particle-velocity standard inapplicable to property inside the permit area owned or leased by the permittee. In order to correct this oversight, OSM is adopting a new rule at § 715.19(e)(2)(iii), which provides the same exemption as found in the new permanent program rules under § 816.67(e). Previous § 715.19(e)(3) has also been removed and incorporated into § 715.19(e)(2), and previous paragraph (e)(4) has been redesignated as paragraph (e)(3).

One commenter suggested that the rules governing flyrock proposed on March 24, 1982, at §§ 816.67(c) and 817.67(c) should be adopted under the initial regulatory program at Part 715 as well. The commenter pointed out that flyrock should be regulated under the initial regulatory program as well as under the permanent regulatory program. OSM declines to adopt such a change for several reasons. First, OSM believes that flyrock is already regulated by § 715.19(e)(2)(i). Second, the initial regulatory program is of such limited applicability at this time that OSM expects that such a rule would be of limited value. If a compelling reason for such a rule becomes evident, OSM may, at a later date, determine that it would be useful to propose an initial regulatory program flyrock rule.

Section 780.13

Blasting plans outline the procedures the operator intends to follow in conducting blasting operations. Section 780.13 of 30 CFR requires each application for a permit for a surface coal mine to have a blasting plan, sets standards for blasting plans, and details the information which is to be submitted along with the permit application.

Section 780.13(a) requires the operator to demonstrate in the blasting plan that the operator will achieve the applicable performance standards. In the blasting plan the operator will explain how the performance standards set out in §§ 816.61–816.68 will be achieved. The plan will include information setting the applicable ground vibration and airblast limits and justifying the use of these limits. These limits are discussed more fully in the preamble in relation to § 816.67. The plan must also discuss steps to be taken to control the adverse effects of blasting operations.

Some commenters believed that the blasting plan requires excessive detail in descriptions of limits to be met in protecting structures and the public from damage. Section 507(g) of the Act mandates that an applicant outline in the application the procedures and standards to be used to meet the environmental protection performance standards of Section 515(b)(15) of the Act. Therefore OSM believes the requirement for explanations of the applicable ground vibration and airblast levels is justified.

A commenter requested clarification of the information and explanations required in a blasting plan and suggested that OSM should require identification of sensitive areas, and "worst case scenarios." The intent of these rules is to provide nationwide requirements for blasting plans as required by the Act. OSM does not believe that it is necessary specifically to require identification of sensitive areas and worst case scenarios in the blasting plan. The blasting plan must be sufficient in any case to demonstrate compliance with the applicable performance standards and the blasting plan may include such information as appropriate. Additionally, this information may be required under a State program in every case if deemed appropriate by the State regulatory authority. The commenter also felt that an explanation of how the applicant will meet the performance standards should be required. Such an explanation is required by the last sentence of § 780.13(a).

A commenter objected to the fact that no blasting plan is required for underground operations. Because of the generally limited extent of surface blasting associated with the underground mining, OSM does not believe it is necessary to require a blasting plan for underground operations. OSM's existing rules do not require blasting plans for underground mines nor has OSM proposed to require such plans. Accordingly, no requirement for an underground mining blasting plan is adopted today. However, the rules adopted today do require the submission of some information (specifically blast designs) prior to certain surface blasts incidental to underground mining. See the discussion accompanying § 817.61(d).

A commenter recommended that OSM require the inclusion in the blasting plan of details such as: (1) The names of certified blasters who will be supervising blasting, (2) lists of structures near blast sites, and (3) a copy of the blasting schedule in the blasting plan. OSM acknowledges that this information could be useful in some instances, but believes that this information is not always necessary to decide whether to issue a permit. In any event, this information will become available prior to blasting. (See §§ 816.61, 817.61, 816.68 and 817.68 for information on certified blasters and lists of structures; §§ 816.64 and 817.64, on blasting schedules; and § 779.24(d), on location of buildings and identification of their current use.) Moreover, regulatory authorities who desire additional information incidental to permitting may require it.

Commenters indicated concern about the lack of a requirement in § 780.13(a) for a certified blast design in all blasting plans and the identification of a certified blaster who is in charge of all blast plans. As to the latter comment, a certified blaster is required for all blasting operations. Identification of a specific certified blaster in the blasting plan would not influence the regulatory authority's decision to issue a permit and would unnecessarily reduce operator flexibility.

OSM rejects the suggestion that a certified blast design be required in all blasting plans. Such detail is unnecessary to assure safe blasting and is unnecessary for the regulatory authority to determine that the blasting will be conducted in accordance with the performance standards. It would be difficult or impossible to require and review blast design for every blast

which will occur. Some conditions are unknown at the time of permitting, and operators need flexibility to design blasts for conditions as they are encountered. Absence of a certified blast design in the blasting plan will not allow unrestricted blasting. The blasting plan must show the general approach to all blasts and how all performance standards set out in §§ 816.67 and 817.67 will be met. In addition, for some sensitive areas more complete analyses, including blast designs, must be submitted as required by new § 816.61(d).

Comments were received regarding OSM's proposed change to allow for blasting plan submissions at a time other than permit application. Commenters were concerned that this would limit the opportunity to comment on blasting plans. No such result is intended. As discussed below, OSM intends to allow later submission of certain blast designs, but these will not be considered to be part of the blasting plan. Although regulatory authorities could receive comments on blast designs, the purpose of having blast designs is largely served by their advance preparation and submission to the regulatory authority. Such submissions increase operator accountability and demonstrate compliance with performance standards. As indicated above, OSM does not believe that submission of detailed designs is necessary in the permit application to assure safe blasting in accordance with the performance standards.

Section 780.13(b), which has been adopted as proposed, provides that each application must contain a description of any system to be used to monitor compliance with the standards of § 816.67, including the type, capability, and sensitivity of any blast monitoring equipment and proposed procedures and locations of monitoring.

One commenter objected to listing capability and sensitivity of blast monitoring equipment in the description of the monitoring system to be used. OSM believes that this is important in assessing control of adverse effects, since the degree of sophistication and complexity of instruments may result in additional data by which to evaluate the damage potential. Seismographs can vary in type, capabilities, complexity of data records, and analytical ability. Therefore, the monitoring system used, including capabilities and sensitivities, may assist the regulatory authority in setting allowable limits for each blasting plan. For instance, operators using instruments with sensitivity to low frequency airblast (concussion) could be given different airblast limits than operators using less sensitive equipment. This could occur because one instrument's range will include more sound levels, whereas a less sensitive instrument might ignore some low frequency noise. It is also important for the regulatory authority to know the type and sensitivity of equipment in order to evaluate the information it receives.

Commenters objected to the proposed deletion (from OSM's previous rules) of the requirement that an operator specify the procedures by which an operator will meet recordkeeping requirements. OSM proposed to delete the list of data from § 780.13(b) because that data is required by § 816.68. OSM believes that the recordkeeping procedures set out in §§ 816.68 and 817.68 are sufficient to ensure that the records are complete and adequately kept. A further requirement that the operator indicate how the operator intends to keep such records would be unnecessarily repetitive. The rule adopted today, at § 780.13(a), continues to require an explanation of how the operator intends to comply with § 816.68. All that has been removed is the specific list of information the blasting plan must include. Therefore, Section 507(g) is satisfied without regulatory redundancy. False or inaccurate recording of information will be handled through enforcement of § 816.68 or § 817.68. Commenters raised questions about the ability of blasters to keep records without an adequate knowledge of terms. Knowledge of terms and the ability to keep records would be evaluated in the context of training, examination, and certification of blasters. (This is governed by 30 CFR Chapter VII, Subchapter M.) For permitting purposes, it should be sufficient to show that blasts will be conducted under the direction of certified blasters. Accordingly, OSM adopts no rule in Part 780 requiring operators to demonstrate a knowledge of blasting terminology prior to permitting. However, such a demonstration can be included as a facet of the certification program.

Commenters objected to deletion of previous § 780.13(f) requiring that the operator define what specific conditions might require deviations from blasting schedules. Control of all blasts should be under the cognizance of certified blasters who will be trained in recognizing and handling hazardous conditions. Trying to anticipate all potentially hazardous situations is nearly impossible since many may not occur or be discovered until after mining commences. Furthermore, variation of potentially dangerous conditions may warrant alternative action to that specified in a permit application.

Other commenters suggested that the description of the monitoring system required by proposed § 780.13(b) be optional or be submitted only if required by the regulatory authority. In proposing that portion of the rule OSM intended to leave discretion available to the regulatory authority under §§ 816.67(d)(1), (2), and (4) as to whether monitoring systems will be used or if an equation could be used instead. OSM did not intend to require monitoring of all blasts nor monitoring where none would be needed.

OSM has slightly reworded the final rule in §§ 816.67(d) and 817.67(d), adopting the suggestion offered by one of the commenters so as to avoid the appearance that monitoring is mandatory in all cases. (No seismic monitoring is required if ground vibration limits are set using the scale-distance equation of § 816.67(d)(3) and 817.67(d)(3).) However, if a monitoring system will be used, the permit application must contain its description.

OSM's proposed language at § 780.13(c) required additional information on blasts to be conducted within 1,000 feet of certain structures or 500 feet of underground mines. Several commenters objected to inclusion of regulatory provisions which limit blasting within 1,000 feet of certain structures and 500 feet of underground mines. OSM believes that such provisions are necessary and that ensuring proper blast design is important in these sensitive areas. If properly implemented, blast design will prevent damage to structures or underground mines. In addition, requiring blasting operations within 500 feet of active underground mines to be approved by both the regulatory authorities concerned with surface mining regulations and with the health and safety of underground miners will help guard against potential hazards of such blasting to underground miners.

A commenter recommended limiting the applicability of the 500-foot provision from underground mines to active mines, excluding abandoned workings. OSM has accepted this comment with respect to the joint approval requirements included in revised § 780.13(c). The language of the proposed rule has been revised to require the approval of the State and Federal regulatory authorities for health and safety of mines. Other mine safety and health agencies as well as MSHA

may be involved since many States have counterpart agencies with responsibility for health and safety of mines. The language adopted tracks the requirement set forth in Section 515(b)(12)(A) of the Act. There are no specific underground mining activities associated with abandoned underground mines that must be coordinated with surface mining activities. If an abandoned underground mine becomes active, the requirement for joint approval of the blasting would immediately become effective. This change does not preclude MSHA involvement, but provides for joint approvals by all agencies involved. OSM does not agree with the commenter with respect to limiting the submission of blast designs to active underground operations. This comment is further discussed below under § 816.61(d).

Blast design need not be part of the permitting requirements; therefore the requirement of blast designs has been moved into the performance standards section. These designs require a great deal of factual information which may not be developed until mining approaches these critical areas. Accordingly, while OSM has decided to adopt these blast design requirements, they will be included in the performance standards for blasting, rather than permitting. These rules and comments thereto are discussed below at §§ 816.61 and 817.61. OSM also hopes that this restructuring of the rule will eliminate any concern with respect to the performance standards and the unsuitability criteria of Section 522 of the Act. The provision for blast designs when blasting close to certain structures or underground mines is not a prohibition of mining, as previously found invalid by *In re: Permanent Surface Mining Regulation Litigation, supra.* Rather it is a requirement imposing additional standards where the greatest potential hazards exist. The requirement for additional compliance data when blasting within these limits is based on Sections 515(b)(12), 515(b)(15) and 516 of the Act (See also Roth and others, 1977).

Also in the above case, industry challenged OSM's authority to issue regulations governing blasting. OSM believes that it has such authority based upon the reasoning set forth in its brief to the U.S. Court of Appeals for the District of Columbia in the above case.

Section 816.11. Signs and markers. OSM proposed to delete the requirements of § 816.11(f) relating to blasting signs because its provisions would be duplicative of those in proposed §§ 816.66 and 817.66 or duplicative of rules of the Mine Safety and Health Administration. OSM is adopting these changes as proposed.

Commenters objected to the deletion of § 816.11(f) because, according to them, it was necessary to meet the requirements of Section 515(b)(15). OSM believes that the provision for flagging charged holes is chiefly designed to protect mine workers and it would be duplicative to require a second flagging provision in OSM's rules. The Mine Safety and Health Administration rules are adequate to protect mine workers and will also provide protection of other persons who may enter the property. § 816.61(a) requires compliance with all applicable State and Federal rules, which include those set by MSHA at 30 CFR 77.1303(g).

Section 816.61. Use of explosives: General requirements. OSM proposed to change the phrase "person who conducts surface mining activities" to "operator" in this section and throughout the blasting rules. OSM received no negative comments on this change. Accordingly, the change has been adopted as proposed.

Section 816.61(a)

Section 816.61(a) requires operators to comply with all State and Federal laws governing the use of explosives. One commenter indicated that proposed § 816.61(a) gave the regulatory authority power to enforce laws and regulations beyond those authorized by the Act. Section 515(b)(15) requires that general performance standards ensure that explosives are used in compliance with existing State and Federal law. In addition, provisions of Section 515(b)(15)(A) through (E) authorize requirements that are supplemental to existing law. Thus, OSM has the authority under the Act to require compliance with other State or Federal laws regarding the use of explosives in conjunction with any applicable regulations implementing those laws. This is not a change from OSM's existing rule or its existing authority.

Section 816.61(b)

OSM proposed no change to § 816.61(b). That section, which requires a schedule for blasts that use more than 5 pounds of explosives, is adopted without change. The blasting schedule requirements are discussed below at § 816.64.

Section 816.61(c)

OSM proposed in § 816.61(c) to retain the requirement that a blaster certified under Subchapter M of 30 CFR Chapter VII be responsible for all blasting operations. Among those activities cited both in existing § 816.61(c) and in the proposed rule were transportation, storage, and destruction of explosives within the permit area. Commenters suggested deleting transportation, storage, and destruction of explosives from the identified activities. Section 515(b)(15) of the Act requires that explosives be used in accordance with existing State and Federal laws; OMS believes that this includes the transportation, storage, and destruction of explosives. This section was revised in the blaster certification rule which was issued together with this final rule. (See 48 FR 9486, March 4, 1983.)

Section 816.61(d)

OSM proposed in § 780.13(c) to require designs for blasts to be conducted within 1,000 feet of buildings used as public buildings, dwellings, schools, community or institutional buildings or within 500 feet of an underground mine, to be included in the permit application. As discussed above, OSM has determined that this information is more properly obtained in conjunction with the performance at individual blasting operations and is therefore adopted as part of the performance standards for blasting in new § 816.61(d). Operators may continue to submit blast designs as part of the permit application, but may also do so at a later time prior to the blast as approved by the regulatory authority.

This new § 816.61(d) requires that additional design information must be provided when blasting will be conducted within 1,000 feet of any building used as a dwelling, public building, school, or community or institutional building or within 500 feet of an underground mine. Some commenters felt that the requirement that operators submit typical blast designs within 1,000 feet of buildings or 500 feet of underground mines was prohibited according to Judge Flannery's decision. *In re: Permanent Surface Mining Regulation Litigation, supra.* These commenters also felt that a typical design requirement would be unnecessary and is irrelevant.

OSM disagrees. As described above, Judge Flannery's decision struck down OSM's attempt to prohibit blasting within these areas. The rule adopted today does not prohibit blasting within 1,000 feet of buildings or 500 feet of underground mines. Rather it requires the operator to take extra steps in these areas to help ensure the prevention of damage. In this context, blast designs can be a useful tool. They assure adequate planning and, together with

the required direction by a certified blaster, ensure proper implementation. They allow regulatory authority involvement if necessary and provide a record if problems should occur.

The rule requires that the operator submit information outlining specific precautions to be taken and criteria to be implemented. Sketches of drill patterns, delay periods, and decking and the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected will be submitted. Thus, where the damage potential is highest, the regulatory authority will have the greatest information to ensure adequate protection.

The 1,000-foot distance has been selected so that the operator is alerted that special precautions are necessary to prevent property damage and personal injury when conducting blasting operations within this distance. The blast design required when blasting within this area: (1) Provides a preblasting record of the blast design, (2) provides notification to the regulatory authority so that monitoring may be scheduled if appropriate, and (3) ensures that a certified blaster has developed a specific blast design for such blasting. The requirement that a certified blaster prepare and sign the design imposes on the blaster the responsibility for designing the blast in a responsible manner. It also assures that a competent professional has designed the blast.

A commenter recommended limiting the 500-foot provision from underground mines to active mines, excluding abandoned and collapsed workings. The blast design requirement provides for extra protection when blasting near underground mines and recognizes the sensitivity of *all* these structures in accordance with Section 515(b)(12) of the Act.

Other commenters suggested changing the proposed requirement for "specific" blast designs to "standard" or "typical" designs to indicate the acceptability of a typical engineering design solution rather than submitting a series of specific designs and later amending these based on site-specific conditions encountered. Although the words "standard" or "typical" are insufficient to tie the design to the specific blast, OSM believes that the intent of this section will be preserved by using the term "anticipated" rather than "specific." Using the term "anticipated" will allow operators the flexibility to change the designs based on unexpected conditions encountered at particular sites without having to resubmit the designs to the regulatory authority. To the extent a single design is intended to be used on more than one occasion, it need not be submitted more than once, although each blast for which it is used should be identified.

Some commenters believed that the blast design requirement would be duplicative of the record required by § 816.68. OSM, however, believes that both are important; one is necessary for implementing the blast properly, and the other for postblast analysis. As in other professions, the use of a detailed design better ensures its completion. OSM recognizes that formal submission of written blast design is more stringent than other operating practices, but believes that appropriate additional protection will be afforded by such submissions, particularly when mining operations are conducted in residential or inhabited areas.

One commenter objected to the provision in proposed § 780.13(c)(2), that a blast design may be submitted at some time after the initial permit application, because the public may not be afforded adequate participation. OSM believes that the blast design is best submitted at the time when an area is ready to be mined. The rule, adopted in § 816.61(d)(2), allows the regulatory authority to specify a particular time for design submittal. The intent of the design is not primarily for public or regulatory review; rather it serves as a tool for the operator, blaster, and the blasting crew to understand the blast layout and implementation and for the regulatory authority to be advised of the blast parameters and timing, to initiate monitoring, if appropriate, and to ensure compliance with performance standards.

Proposed § 780.13(c)(5) would have allowed the regulatory authority to require a change in the blast design. This has been adopted in § 816.61(d)(5). Some commenters stated that no benefit would result from regulatory authority revision of blast design. OSM recognizes that the certified blaster must retain primary design responsibility. However, the regulatory authority should have the authority to require changes in the design if it believes that required performance standards will not be met.

Commenters felt that proposed § 780.13(c)(6), which required 30-day notice to property owners whose structures are within 1,000 feet of the blasting site, would conflict with § 816.64(b) which requires similar notice via blasting schedules. OSM agrees and has chosen not to adopt the requirement proposed at § 780.13(c)(6).

Section 816.62. Use of explosives: Preblasting survey.

Section 816.62(a)

A number of commenters requested specific time frames for requesting and conducting preblasting surveys. OSM had originally proposed to have notification of the availability of preblasting surveys distributed with the blasting schedule. In response to the comments, a provision has been added as § 816.62(a) which requires an operator, at least 30 days prior to the initiation of the blasting, to notify in writing residents within one-half mile of the permit area of the procedures for requesting a preblasting survey. This notice may be accompanied by a copy of the blasting schedule. The 30-day notice requirement is set to give a resident sufficient time to request a survey and an operator adequate time within which to complete the survey. This change has been made because OSM agrees with those commenters who believed that it is feasible for preblasting surveys to begin earlier than blasting schedules are set. Preblasting surveys may be conducted independently of the actual blasting schedules. Furthermore, the earlier such surveys are requested and completed, the more flexibility the operator will have in scheduling blasts.

Several commenters requested that time limits be placed on preparation of preblasting surveys and for the filing of disagreements. The rules as adopted require operators to provide property owners or residents at least 30 days of notice for requesting blasting surveys, and to promptly complete the survey upon request. Section 816.62(e) has been added to clarify that for those surveys that have been requested at least 10 days prior to the scheduled initiation of blasting, completion of the survey is required prior to the initiation of blasting. If a survey is requested less than 10 days prior to the scheduled initiation of blasting, the operator should take all reasonable measures to complete the survey in a timely manner. Individual regulatory authorities may impose additional time limits if appropriate for the region or locale. OSM has declined to attach a time limit within which to file disagreements. Such a time limit would not necessarily serve the regulatory process. However, it should be recognized that disagreements which are filed promptly or prior to the start of blasting will be more likely to be satisfactorily resolved between the operator and resident than those filed long after the report has been completed and blasting has begun.

Section 816.62(b)

Section 816.62(b) of the final rule allows the owner or resident of a manmade structure within one-half mile of the permit area to request the operator to provide a preblasting survey by writing directly to the operator or to the regulatory authority, who then will request the operator to conduct the survey. Although one commenter objected to this proposal, OSM believes it provides needed flexibility and could expedite the preblasting survey process. An operator is required to conduct the survey promptly and to promptly prepare the report.

Another commenter objected to the requirement for requesting surveys in writing, citing previous preambles as allowing verbal requests. Although the Act does not mandate written requests for a survey, it is the best method to provide control over the request and survey production process, without placing undue burdens on the regulatory authority manpower or on persons requesting surveys. Moreover, the written request will serve as a verification of the request and trigger action by the operator in timely conduct of the survey.

Updated surveys may be requested by the owner or resident at any time. If a structure is enlarged, renovated or modified after a survey is completed, an update to the preblasting survey must be performed if requested.

Other commenters believed that the second sentence of Paragaph (b) should be rewritten to clarify the roles of the requester, the operator, and the regulatory authority in requesting, initiating, and conducting preblasting surveys. OSM has accepted these comments and has edited the sentence slightly to help clarify its intent.

A commenter indicated the need to include owners of property such as pipelines, water wells, and utility towers in the list of those notified for preblasting surveys. OSM does not consider the language of the Act or the rules to limit the preblasting survey to residences or buildings. Section 515(b)(15)(E) of the Act refers to manmade structures and therefore includes any structure such as dams, utility stations, pipelines, etc.

Commenters suggested that the proposed system of preblasting surveys would not protect operators from false damage claims. As a solution they suggested operators should have the right to request preblasting surveys. The preblasting survey provisions of the Act only provide the owner or resident the opportunity to request preblasting surveys. If the operator wishes to conduct a survey, a specific request could be made to the owner of the particular structure. If concern of false claims persists where a property owner does not request or refuses to allow a preblasting survey to be conducted, the operator should ensure that the blasting is carefully monitored.

Commenters objected to the requirement of a preblasting survey within one-half mile of a "permit area" while other requirements, such as notification in proposed § 816.64(b)(2), were keyed to the "blasting site." All blasting sites are contained within a permit area. Section 515(b)(15)(E) of the Act offers every resident or owner within one-half mile of any portion of the permit area the opportunity for a preblasting survey. Therefore, OSM has adopted the regulatory provisions which gives all owners and residents within one-half mile of the permit area the opportunity to receive a preblasting survey before blasting begins on any portion of the permit area. OSM believes that any other regulation would conflict with the language of the Act.

Section 816.62(c)

Under § 816.62(c) as adopted, preblasting surveys will address the condition of the structure and document any preblasting damage or structural defects. Assessments of structures such as pipelines, cables, transmission lines, and wells, cisterns, and other water systems will be required, but such assessments may be limited to surface conditions and other readily available data. The person conducting the survey must give special attention to such water systems and should document all available data and determine whether such additional analysis is appropriate, based upon the significance of the water system, its vulnerability, and the availability of data.

Commenters objected to OSM's proposal to require that special attention be given to water wells because recent studies have proven that blast vibrations have little effect on water quantity and quality. Other commenters believed that assessment of quality and quantity of water is essential in surveys involving wells. Such information is believed important for both the user and the operator, since hydrologic impacts can be caused both by mining and blasting. The degree of detail may be determined for each case by the regulatory authority, depending on the nature and amount of water or structures involved. Based on these comments the last sentences of § 816.62(c) have been rewritten to clarify OSM's intent.

Section 816.62(d)

Section 816.62(d), which was proposed as § 816.62(c), requires the person completing the survey to sign it and provide a copy of the report to the regulatory authority and the person requesting the survey. This section also allows the person who requested the survey to note disagreement with the contents by submitting a written detailed description of the disagreement.

A commenter requested that the owner or resident sign the preblasting survey indicating concurrence. OSM declines to adopt such a requirement which it believes is unnecessary. OSM believes that allowing residents or property owners to file their disagreements is adequate.

OSM's proposed rules had specified that the original of the survey be provided to the regulatory authority. Commenters suggested that either a copy or the original be provided to the regulatory authority. OSM accepts this suggestion and has adopted appropriate regulatory language.

A commenter objected to the omission in the proposed rule of a mechanism to resolve disagreements in survey data. OSM declines to adopt this suggestion. OSM believes that the regulatory authority is responsible to insure that blasting surveys are complete and accurate. Further, the regulatory authority could direct that inadequate surveys be redone. However, OSM does not believe it necessary to require that any disputes be resolved by the regulatory authority, but only that the survey, including the description of disputed results, should serve as a record of the condition. It should be noted that the regulatory authority could take appropriate action to ensure that surveys are complete and if a serious potential danger exists could incorporate restrictions into the blasting plan and performance standards.

Section 816.64. Use of explosives: Blasting schedules. The title of new § 816.64 has been shortened to "Use of explosives: Blasting schedules" as was proposed.

Section 816.64(a)

OSM has revised § 816.64(a)(1) to clarify the fact that the regulatory authority may limit the timing of blasts, the area covered by a blasting schedule, and the sequence of blasting. The proposal only mentioned limitations pertaining to hours per day, times per day, or number of blasts per day. As adopted § 816.64(a)(1) will allow blasting only at times approved by the regulatory authority and announced in

the blasting schedule. The regulatory authority's decision restricting blasts must be justified on the basis of public health and safety or welfare. OSM has not adopted the proposed requirement that limitations on blasting be based on written submissions only. However, every determination must have an adequate basis.

OSM believes that prevention of excessive noise, especially in populated and residential areas, is within the ambit of "health and safety or welfare." Thus if noise from blasting will disrupt nearby residents, blasting may be limited to times which create the least discomfort. OSM believes that certain site-specific conditions, such as residential surroundings, may require prohibition of nighttime blasting. The final rule has been revised to require such prohibitions, if conditions warrant.

Several commenters objected to the proposed removal of regulations absolutely limiting the times of blasting (previous §§ 816.64(b)(2)(ii) and 816.65(a)) or the blasting area (previous § 816.64(b)(2)(i)). The old rules set absolute limits on the number of hours per day, nighttime blasting, and the size of an area covered under one blasting schedule. OSM recognizes that such limits may be useful under some conditions. For this reason OSM has decided to retain the requirement that blasting be conducted between sunrise and sunset. That requirement is contained in § 816.64(a)(2). The final rule provides flexibility to the regulatory authority to impose more restrictive time periods or to allow nighttime blasting based upon a showing by the operator that the public will be protected from adverse noise and other impacts.

OSM does not believe, however, that national limits on the size of the blasting area or number of hours of blasting per day are necessary. The final rule deletes the prior absolute constraints of 4-hour aggregate amount of blasting per day, and 300-acre maximum blasting areas. These standards presented limits which in some cases were arbitrary or too stringent for an operator to develop an effective schedule. Individual regulatory authorities may impose such restrictions or other more stringent limitations on a site-specific or statewide basis as appropriate. Restraints on the total time of blasting is more a function of planning. The blasting schedule is required, and adherence to the schedule is expected. The regulatory authority must review and approve the times for blasting in the blasting schedule. To make the schedule work, the operator must control production, loading, delivery, and other physical factors to meet his schedule. Where the regulatory authority determines that blasting should be limited, it should impose such limits. In the absence of such a determination, the operator must conform to the approved blasting schedule.

OSM had proposed to relax some restrictions governing unscheduled blasts. Commenters objected that the specific restrictions on unscheduled blasting were omitted. In some instances, such as unusual weather conditions or unavoidable delays, public or operator safety may dictate unscheduled detonations. Obviously, where public or operator safety so require, unscheduled blasting is appropriate. However, OSM has declined to adopt the portion of the proposal which would have allowed unscheduled blasts in nonemergency situations. Thus, while OSM recognizes that some blasting activities such as the construction of roads or the creation of faceups are nonperiodic, these nonemergency blasts should be planned, scheduled, and announced in advance in the blasting schedule. Thus, § 816.64(a)(3) allows unscheduled blasts only in emergency situations. However, schedule changes for nonemergency blasts may be made between 10 and 30 days before blasting begins under § 816.64(b)(3).

Because unscheduled blasts will only be conducted in emergency situations, OSM has adopted the requirement of notification of all residents within one-half mile of the blasting site when unscheduled blasts will occur by requiring that audible notification take place. This allows for more efficient notification of every one within one-half mile, and such notification can be provided more quickly. Commenters expressed concern that in emergencies such as adverse unexpected weather conditions it might be impossible to notify all residents orally. Accordingly, in these situations, audible signals may be used.

Some commenters suggested adding a provision for the resolution of disputes with regulatory authorities regarding blasting schedules.

Apparently, the commenter was concerned with possible problems caused by disapproval of proposed blasting schedules. OSM believes that no such provision is necessary. In making the determination to restrict blasting, the regulatory authority must determine that such limits are reasonable and necessary in order to protect the public health and safety and welfare. OSM believes that standard is sufficiently objective to minimize disputes.

Section 816.64(b)

OSM is adopting paragraph (b)(1) of § 816.64 and most of paragraph (b)(2) as proposed. These require newspaper publication of the blasting schedule between 10 and 30 days before blasting is to begin and set the requirements for distribution of the blasting schedule to local governments, public utilities, and residences within one-half mile of the blasting site. The term "blasting site" here is the area formed by the perimeter of the blast holes.

One commenter felt that publication of a blasting schedule 10–30 days in advance would be too difficult. He suggested that production schedules could not be set that far in advance. OSM believes it is important for operators to undertake sufficient planning and preparation so that they know their schedule with sufficient certainty to allow publication of schedules well in advance. Accordingly, OSM has adopted the requirements as proposed.

OSM had proposed that information on how to obtain preblasting surveys should be provided when copies of the blasting schedule were distributed. OSM received comments that 10–30 days were insufficient to conduct preblasting surveys. Both operator and regulatory authority commenters felt that additional notification of the availability of preblast surveys should be provided. Accordingly, OSM has provided that notice of availability of preblasting surveys may be distributed separately from and earlier than the blasting schedule. As discussed earlier, preblasting survey information is required to be distributed according to § 816.62(a).

Notification of blasting as required by Section 515(b)(15)(A) of the Act and by the regulations is provided by three methods: (1) Schedules published in newspapers, (2) schedules delivered to persons living within one-half mile of the blasting site, and (3) daily notification of blasts through audible signals to locations within at least one-half mile of the blasting site (required by § 816.66(b)).

Section 816.64(c)

Section 816.64(c), setting forth the blasting schedule contents, is adopted as proposed. As indicated above, the final rule removes the constraints of 4-hour aggregate per day, daylight-only blasting (upon approval of the regulatory authority), and 300-acre blasting areas. Such restrictions may be

imposed by individual regulatory authorities under § 816.64(a), as appropriate.

Section 816.65

As proposed, OSM has deleted previous § 816.65 and recodified its requirements as follows:

The requirements contained in previous § 816.65 (a) and (b), which set forth limitations on the hours and times of blasting, are adopted in amended form in § 816.64(a), which is discussed above. The requirements contained in previous § 816.65(c), pertaining to audible signals, are adopted in an amended form in § 816.66. OSM has deleted the requirement of periodic notification of meanings of warnings and all-clear signals. Those notifications are adequately provided through blasting signs and the blasting schedule.

Previous § 816.65(d), limiting access to blasting areas, has been rewritten and renumbered as new § 816.66(c), which is discussed below.

Previous § 816.65(e), governing airblast, has been adopted in amended form as § 816.67(b).

Previous § 816.65(f), pertaining to blasting within 1,000 feet of certain buildings and 500 feet of other facilities, was proposed to be incorporated in amended form in § 780.13(c). Instead it has been adopted in amended form as § 816.61(d), which is discussed above.

Previous § 816.65(g), governing flyrock, has been adopted as § 816.67(c), which is discussed below.

Previous § 816.65(h), containing a general performance standard requiring blasting to be conducted to prevent injury or damage, has been adopted as § 816.67(a), which is discussed below.

Requirements similar to those in previous § 816.65(i), which contained maximum peak-particle-velocities for blasting, have been adopted in amended form in § 816.67(d).

The requirements of previous § 816.65(j), identifying the circumstances where less stringent performance standards apply, have been adopted as § 816.67(e).

Previous § 816.65 (k) and (l), containing alternative means to determine peak-particle-velocities, have been modified and adopted as part of § 816.67(d).

Section 816.66. Use of explosives: Blasting signs, warnings, and access control. Section 816.66 contains provisions for blasting signs and warning procedures throughout the permit area. It also contains the physical access and control requirements to fulfill the notification provisions of § 515(b)(15)(A) and the public protection provisions of § 515(b)(15)(C) of the Act.

Section 816.66(a)

New § 816.66(a)(1) includes provisions from previous § 816.11(f)(1) and the proposed rule, and requires that the operator conspicuously place signs reading "Blasting Area" along the edge of any blasting area that comes within 100 feet of any public road right-of-way and at the point where any other road provides access to the blasting area. Notice along any road that provides access to a blasting area will ensure that anyone entering the blasting area is aware that blasting is taking place.

New § 816.66(a)(2) includes provisions from previous § 816.11(f)(2), and, at all entrances to the permit area from public roads or highways, requires signs which state "Warning! Explosives in Use." These signs must clearly list and describe the meaning of the audible blast warning and all-clear signals and explain the marking of blasting areas and charged holes.

In addition, all signs used to mark blasting areas must conform to the specification for signs and markers set out in § 816.11.

A State regulatory authority commenting on the proposal recommended that signs required under proposed § 816.66(a)(1) contain the warnings and explanations required for signs under proposed § 816.66(a)(2), because in some instances the signs referenced in § 816.66(a)(1) may be closer to the blasting site than those at entry points (referenced in § 816.66(a)(2)). OSM has not accepted this recommendation. The "Blasting Area" signs are intended to warn people of the limits of and to stay out of the area where blasting will take place. The more complete description of paragraph (a)(2) is intended to provide guidance to persons who may need to enter the permit area of precautions to follow when within the permit area.

Commenters objected to the 100-foot requirement and suggested that signs be required only when a public road right-of-way occurs within 50 feet of the blasting area, citing that more signs would be required than under the previous rules. OSM disagrees since the previous rules required signs on roads within 100 feet of the permit area but required signs at 50 feet when roads were actually within the permit area. OSM has adopted a consistent 100-foot distance in order to simplify the requirements.

A commenter suggested adding to § 816.66(a)(2) the phrase "awaiting firing" after "charged holes." OSM has accepted this suggestion, recognizing the need to clearly advise personnel entering the mine site of the precautions to be taken to prevent injury.

Section 816.66(b)

New § 816.66(b) requires the use of audible warning and all-clear signals of different pattern. It also requires notification of the meaning of the signals to those who work within the permit area and those who reside or regularly work within one-half mile of the permit area.

Several commenters objected to the term "different character" in proposed § 816.66(b) regarding the application of audible signals, assuming this meant different sounds, sounds with different tonal qualities. OSM recognizes this concern and has replaced "character" with "character or pattern" to allow use of the same instrument to make the sound in a different pattern to differentiate between "warning" and "all-clear."

Section 816.66(c)

New § 816.66(c) requires the controlled restriction of access to the blast area until hazards no longer exist and access can be safely resumed. Both livestock and persons are protected. Also it requires that no unusual hazards such as imminent slides or undetonated charges exist.

A commenter objected to the deletion of the first sentence of § 816.65(d) restricting access to areas subject to flyrock, when it was redesignated § 816.66(c). By including the phrase "within the blasting area" in § 816.66(c), OSM intends to encompass all areas where the hazards of flyrock are present. Therefore § 816.66(c) controls the same area where access was previously controlled under § 816.65(d).

Section 816.67. Use of explosives: Control of adverse effects.

Section 816.67(a)

OSM is adopting § 816.67(a) as proposed. The rule requires that blasting be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of ground or surface waters outside the permit area. This provision, which is the successor to previous § 816.65(h), implements Section 515(b)(15)(C) of the Act.

Commenters objected to the requirement in proposed § 816.67(a) which requires blasting to be conducted in such a way as to prevent the "change in the course, channel, or availability of ground or surface waters outside the permit area." The commenters felt that it

would be impossible to distinguish between changes resulting from blasting and those resulting from other mine-related operations. The requirements of § 816.67(a) are adopted from Section 515(b)(15) of the Act which specifically requires that blasting be conducted in that manner. Furthermore, since OSM's permitting regulations at § 786.19(c) require the finding that damage will be prevented with respect to hydrology outside of the permit area resulting from mining, no blasting could be permitted which would result in material offsite hydrologic damage.

Section 816.67(b)

Airblast limits. OSM is adopting a slightly modified version of the airblast rule from that proposed in § 816.67(b). Airblast limits must be met at any dwelling, public building, school, church, or community or institutional building outside the permit area, with the exception of certain structures owned by the operator and covered by § 816.67(e). OSM has lowered the allowable airblast limit from that proposed for measuring systems with lower frequency limits below 6 Hz (hertz) from 130 to 129 dB (decibels). This has been done at the request of a commenter who indicated that the higher airblast limit was inconsistent with data published by the Bureau of Mines in RI8485 (Siskind and others, 1980).

In addition, OSM has retained separate airblast limits from previous § 816.65(e)(1) for c-weighted, slow response measuring systems and flat response measuring systems with a lower frequency limit of .1 Hz or lower. These peak limits are 105 dBC and 134 dB, respectively, and are consistent with BOM data. The c-weighted, slow response limit is the same as the previous rule and the .1 Hz or lower system limit than the previous rule. The use of of both of these measuring systems must be approved by the regulatory authority.

Several commenters suggested that airblast limits should not apply at locations where a structure is owned by an operator. It appears that there was some confusion as to the applicability of § 816.67(e). In its proposal OSM intended that Paragraph (e) apply to such structures for both airblast and ground vibration. In order to clarify the applicability of the exception in § 816.47(e), the phrase "except as provided in Paragraph (e) of this section" has been added to the end of the airblast standard in § 816.67(b)(1)(i).

A commenter suggested inclusion in § 816.67(b)(1)(ii) of specific rulemaking and public hearing procedures for reduction of the airblast standard. In its proposal OSM intended that the maximum allowable airblast standard applicable to a specific mine may be modified by the regulatory authority if OSM's permanent program limits appear to create excessive levels which may cause damage. To clarify its intent, OSM has revised § 816.67(b)(1)(ii) and inserted the phrase "for use in the vicinity of the specific blasting operation." Rulemaking procedures are not required for changes to the standards that are not of general applicability.

Another commenter believed that OSM's proposed language which included the word "may" and also the requirement "if necessary" gave the regulatory authority too much discretion to decline to reduce the maximum airblast limit, if it determined that a lower value is necessary to prevent damage. OSM believes that imposition of a lower value is properly within the discretion of the regulatory authority. However, should the regulatory authority determine a lower value to be necessary it must set a lower value. For this reason the final rule contains the language under which the regulatory authority determines whether or not imposition of a lower limit is necessary, and, if so, must reduce the limit.

Commenters objected to proposed § 816.67(b)(1)(iii) because it placed a burden on operators to evaluate "adverse atmospheric conditions." OSM agrees that there is no need to have such a specific requirement. Accordingly, proposed § 816.67(b)(1)(iii) has not been adopted. However, the requirement to meet applicable airblast standards is general and applies regardless of atmospheric conditions.

Airblast monitoring. A commenter on proposed § 816.67(b)(2)(i) suggested that airblast measurements should be required at the location and occurrence of every seismographic reading. In considering this provision, OSM recognizes the need for ensuring that airblast levels are met, but also believes that the location of seismographic monitoring, for instance, may not be the critical or appropriate location for airblast monitoring. Wind, temperature, and overcast weather can affect the maximum airblast location. Therefore, the final rule includes a general provision for periodic airblast monitoring by the operator in which the locations and the periods of such monitoring are left to the discretion of operators and the regulatory authority. A sentence has been added to the § 816.97(b)(2)(i) to emphasize that the regulatory authority may specify monitoring locations and determine which blasts have to be monitored.

A commenter was dissatisfied with the explanation in the preamble to § 816.67(b)(2) (47 FR 12766) concerning airblast monitoring "at or near the nearest structure." The issues raised are: (1) When is a notice of violation issued for exceeding airblast standards? and (2) where should monitoring be located? In response, OSM notes that airblast limits apply at any location where damage may occur (*i.e.*, the location of any structure, not necessarily the nearest). Therefore, a monitor located at any structure which records a value exceeding the maximum value for that frequency would record a violation. The location may not be the nearest structure because wind conditions may focus airblast away from near structures to those at greater distances from the blast. Although OSM is not requiring specific locations to be monitored, the operator is responsible to insure that such airblast monitoring does take place to assure compliance with airblast limits at all locations.

Section 816.67(b)(2)(ii) specifies the sensitivity of airblast monitoring equipment, requiring the upper end of the response range of the measuring system to have a flat frequency response of at least 200 Hz. A commenter objected to the provision in proposed § 816.67(b)(2)(iii) which would have allowed the regulatory authority to approve alternative measuring systems for airblast. As discussed in the preamble to the proposed rules (47 FR 12766), some suitable alternative monitoring systems exist, such as a 0.1 Hz- or a C-weighted instrument. As described above, OSM has inserted limits for these particular alternatives in the final that will provide equivalent levels of protection. Therefore proposed § 816.67(b)(2)(iii) is unnecessary and has not been adopted.

Section 816.67(c)—Flyrock. OSM has adopted § 816.67(c) approximately as proposed. The final rule is essentially the same as previous § 816.65(g). Flyrock includes material either travelling along the ground or in the air. It may not be cast more than one-half the distance to the nearest dwelling or other occupied structure nor beyond the area of regulated access. It may not be cast off the permit area.

Comments varied on the items to be included as flyrock. OSM, in review of these comments intends to include rock, mud, and debris as flyrock. It should be noted that flyrock is considered to be cast, projected, or thrown, not drifting smoke or dust particles of fragmented rock. Several commenters disagreed

with the provision limiting flyrock range to one-half the distance to the nearest inhabited structure. These commenters cited this restriction as contrary to other departmental requirements for maximum coal recovery. Others cited this provision as providing a degree of safety in excess of that required by the Act. OSM has opted to retain the provision for one-half the distance, but has limited its applicability to dwellings or other occupied structures. This places the burden on operators to provide appropriate design restraints when mining close to such dwellings or structures, such as additional stemming, burden, or mats to prevent flyrock. Section 522(e)(5) of the Act limits mining within 300 feet of occupied dwellings, subject to valid existing rights or unless a waiver is obtained from the owner. Such a waiver does not, however, waive the protection of § 816.67(c)(1) from flyrock or other adverse effects of blasting.

OSM has also chosen to retain the prohibition against casting flyrock beyond the permit boundary limit, rather than allowing operators to cast it on the land owned or leased by the operator.

Unless such land is permitted, access control is not provided, and public protection might be jeopardized.

A commenter suggested including public road rights-of-way in § 816.67(c)(1). OSM considered this addition, but rejected it because such areas will be protected according to either § 816.66(c)(2) or § 816.67(c)(3) which prevents flyrock from being cast outside the permit boundary or the area of control under § 816.66(c).

A commenter raised the question of defining the blasting site as the location from which flyrock distances are measured. OSM agrees with explosives industry terminology which generally refers to the limits of a blasting site as encompassing an area contained within the perimeter formed by the exterior charged holes. This differs from the area of regulated access (blasting area) referred to in § 816.66(a)(1) and § 816.66(c). The blasting area reflects the area where danger from flyrock exists for mine workers and persons potentially entering the mine site.

Commenters requested the phrase: "from the blasting site" be changed to "from its point of origin" in § 816.67(c) referring to the precise location of the flyrock. Determining the exact point of origin of flyrock is generally impossible after blasting has occurred, and therefore the language "from the blasting site" has been adopted as proposed.

Section 816.67(d)—Ground vibration. Section 515(b)(15)(C) of the Act requires the regulatory authority to establish limits on the use of explosives based on physical conditions of the site so as to prevent injury to persons and damage to public and private property outside the permit area. Ground vibration is among the most relevant factors which must be considered.

OSM has proposed three options for the control of ground vibration. The final rule governing ground vibration incorporates aspects of each of the three options proposed. The three options were: (1) A peak-particle-velocity for each permit based on site-specific data, (2) A variable ground-vibration limit based on distance to the nearest structure; and (3) A constant particle-velocity criterion of 1.0 inch per second at any structure outside the permit area. The discussion which follows first describes the rule that is adopted and then responds to specific comments on the various alternatives.

The rule adopted today sets limits on the allowable ground vibration (i.e., peak-particle-velocity) at certain types of protected structures to ensure the prevention of damage. These include dwellings, public buildings, schools, churches, or community of institutional buildings outside the permit area.

Peak-particle-velocities have been selected which reasonably assure that structures will be protected from damage. Blasts conducted close to structures where the frequency of ground vibration is generally highest will be allowed to have higher peak-particle-velocities. Further away, where potentially damage-causing lower frequencies would predominate, a lower peak-particle-velocity is mandated. For structures which are not buildings, the operator must submit a value for regulatory authority approval.

Three methods for ground-vibration limitation are provided in §§ 816.67(d)(2), (3) and (4) for the use of operators. These methods vary in their complexity and expense in application.

First, peak-particle-velocities are set for use with seismic monitoring. Section 816.67(d)(2)(i) provides specific numeric limits for ground vibration for use with general seismic monitoring and equivalent scaled-distance factors. These limits provide the protection to structures including residences, based on an analysis of the damage recorded by the RI8507 study (Siskind and others, 1980). The specific limits are described below, together with OSM's justification therefor.

Second, as an alternative provided under § 816.67(d)(3)(i), an operator may use a scaled-distance equation which determines charge-weights (the weight of explosives) based on the distance of the blast to the nearest structure. The equation is used to determine the allowable charge-weight per delay without mandatory seismic monitoring. Under § 816.67(d)(3)(ii) operators may, with regulatory authority approval, develop and use a modified scaled-distance equation.

Third, under § 816.67(d)(4) the operator is allowed to conform to maximum peak-particle-velocities that vary by frequency. In those situations an operator must use sophisticated seismic monitoring which records the frequency content of the ground vibrations. A detailed discussion of this paragraph is included below.

Under § 816.67(d)(5), the regulatory authority may reduce ground vibration levels on a site-specific basis if necessary to provide sufficient damage protection. Generally seismic monitoring is at the option of the operator; however, under § 816.67(d)(6) the regulatory authority may require it and specify locations for such monitoring.

Under § 816.67(e) the operator may exceed the prescribed ground-vibration levels at structures owned by the operator with the written waiver of any lessees.

In selecting particle-velocity limits, OSM has considered the differences between performance criteria, design standards, and the range of potential damage based on these parameters.

In controlling ground vibration, information such as geology, hydrology, seismic characteristics, distances to structures, and the amount of explosives must be evaluated. These factors, plus the level of fragmentation necessary, must be considered in setting the pattern of drill holes, selecting of explosives, and determining charge-weight. Design standards for ground vibration, such as burden, spacing, stemming, and subdrilling were not mandated by the previous rules and are not found in the final rule. Such design considerations are more appropriately applied by the certified blaster. The performance criteria to be met for ground vibration must be based on the ground-vibration levels predicted to cause damage. To stay within these levels, design parameters which are intended to keep ground vibration at or below the maximum allowable level must be used. Ground-vibration limits which protect homes and buildings from damage have been predicted from research studies. One Bureau of Mines study, RI8507 by Siskind and others (1980), provides a consolidation of such studies for the purpose of developing safe limits. The study recommended a 0.75 inch-per-second standard for dwellings with

gypsum-board interiors and 0.50 for plaster-on-lath interiors. These recommended limits have been highly criticized by operators, explosives users, explosives engineers, explosives manufacturers, and others as overly stringent. Some claim that these limits result from misinterpretation of the data. Also, portions of the RI8507 study have been cited for inaccurate data and damage findings, placing some question on the conclusions and recommendations of the study. A number of comments contained such criticism.

OSM considers RI8507 as the most up-to-date consolidation of research data for evaluation of blast-induced damage, but agrees that the interpretation of the data raises some questions. OSM utilizes the study's data base to support the regulatory limits on blasting, but does not accept the study's recommended standards. From the data on page 16 of RI8507, OSM concludes that design indicators, relating design to performance levels such as the weight of explosives per delay, do not consistently produce absolutely predictable uniform levels of performance. Thus a blast using a specific charge-weight of explosives may result in a range of particle-velocities, and repeated blasts at that charge-weight may result in somewhat different ranges. Use of scaled-distance factors as design guides produces ranges of results as depicted on Figure 11 of RI8507. (For example, the range of expected particle-velocities for different mining blasts for a scaled-distance of 100 is from 0.015 to 0.20 inch per second, a factor of 1,333 percent.) Therefore, an operator attempting to meet a 1.0-inch-per-second standard would not design for a blast with a peak particle velocity of 1.0 inch per second, but rather would design for a blast with an expected range of peak particle velocities not to exceed 1.0 inch per second. The design range for a 1.0-inch-per-second limit from Figure 11 is 0.15 to 1.0 inch per second with a scaled-distance of 30. A scaled-distance of 55 results in a range of lower values. When monitored with seismographs, this approach will require careful application of design criteria to fall within the maximum limit. Without seismic monitoring, conservative safety factors must be applied to assure compatible performance for regulatory compliance.

Because OSM believes operators must design to achieve lower levels than the maximum permissible, setting a 1.0-inch-per-second performance level is believed by OSM to result in actual readings in the range 0.30 to 0.70 inch per second. This range is consistent with the recommendations in RI8507 (Siskind and others, 1980). OSM believes that a 1.0-inch-per-second peak-particle-velocity will prevent the occurrence of threshold damage and has set such a standard in § 816.67(d)(2)(i) for distances of 301 to 5,000 feet from the blasting site to the nearest building.

Several commenters objected to the use of the RI8507 study. The report incorporates and consolidates field data and laboratory experiments conducted in the definition of damage produced by blast vibrations. In addition to the conclusions reached, which have been the subject of much dispute, it has several chapters dealing with the fundamentals of ground vibration and airblast, including ground-vibration propagation with scaled-distance, response-spectra analysis applications, interior considerations such as amplification, and a chapter on failure characteristics of materials which relates damage potential to the inability of materials to undergo deformation and withstand stress or strain.

Commenters' concerns focused on the adequacy of the new structures and data observed, the relevance of the old study data, and the definition of the terms "threshold," "minor," and "major" damage. In developing these rules, OSM has relied upon the new data in RI8507 which was collected on actual structures in a controlled manner using highly complex and sensitive monitoring equipment. OSM followed the suggestion of commenters and used such data as a basis for its regulatory actions.

In review of damage data in the RI8507 study in Figure 46 on page 51, as related to the readings in Table 1 on page 10 of that report, OSM finds that threshold damage did not occur until considerably higher levels than the report's conclusions indicate. For instance, "structure 51" incurred damage from all recorded blasts except one at 0.5 inch per second. Threshold damage ranged from levels of 1.04 to 7.25 inches per second, but the damage which was observed at 1.04 inches per second immediately followed six higher recordings in the following order: 1.16, 1.22, 2.84, 1.24, 1.86, and 10.21 inches per second. OSM believes that if the structure had not been weakened by the six successive stronger blasts, a vibration of 1.04 inches per second may not have damaged it. "Structure 27" recorded damage at the lowest reading of the new data in RI8507 (0.72 inch per second). This value followed blasts at the following levels: 1.38, 1.89, 1.91, 2.33, 3.73, 5.31, 2.34, and 1.22 inches per second. Of these, only blasts with ground vibrations recorded at 1.91 and 5.31 inches per second were attributed with threshold damage. Numerous blasts with considerably higher values did not result in damage.

The data below taken from Report RI8507 demonstrate that the range of threshold damage occurred at 0.75 to 2.0 inches per second, with the majority of damage points concentrated between 1.0 and 2.5 inches per second, whereas, no nondamage points were observed above 2.0 inches per second. Of the structures presented as new damage points on Figure 46 of RI8507, the following data are evaluated:

Structure No.	Material type	Number of observations		Number of damage points	
		<1.0[1]	>1.0[1]	<1.0[1]	>1.0[1]
19	Plaster/lath.	29	16	1	5
20	Gypsum board.	13	2	2	1
27	Plaster/lath.	1	9	1	2
51	Plaster/lath/brick.	1	11	0	[2]13
58	Gypsum board/brick.	1	5	0	5
61	Gypsum board/plaster.	1	1	1	1
Total		46	44	4	27

[1] Inch per second.
[2] Questionable data plotting.

Based on the above table, 91 percent of blasts observed below 1.0 inch per second did not cause damage. Of the 4 blasts observed below 1.0 inch per second that caused damage, one at 0.72 inch per second followed two blast observations greater than 1.0 inch per second (2.34 and 1.22) which did not result in damage. Therefore, the 0.72 value is questionable as the actual damage-producing blast. Another damage value of 0.79 followed a nondamage value of 1.10 inches per second.

Therefore, OSM considers the 1.0-inch-per-second standard adopted in § 816.67(d)(2)(i) for the range of 300 to 5,000 feet to provide a degree of protection consistent with the Act, because (1) The range of threshold damage appears to occur at levels above 1.0 inch per second; (2) the range of recordings in field blasts designed to meet a maximum limit of 1.0 inch per second will infrequently reach 1.0 inch per second with expected results in the range from 0.30 to 0.90 inch per second; and (3) the ground-vibration criteria coupled with other limitations on adverse effects from blasting will tend to require design considerations which lead to cumulative protection (*i.e.*,

separate constraints on flyrock and airblast will limit charge-weight, dimensions, and explosive characteristics).

Several commenters compared the recommended levels in the RI8507 study (Siskind and others, 1980) to the values OSM proposed in Option I for structure type and frequency.

As can be seen from the following comparison, the recommended peak-particle-velocities of the study are lower than those in OSM's proposal.

Structure type	RI8507 recommended at 40 Hz (in/sec)	OSM rule at 10 Hz (in/sec)
2	0.50	0.75
3	0.75	1.00

2. Older homes more than 20 years old with construction elements such as plaster-on-lath interiors and deteriorated or rigid, easily fractured construction materials.

3. Modern homes less than 20 years old with gypsum-board interiors, reinforced concrete or concrete masonry unit foundations, and other wood-frame and wood-clad structure.

In response to these commenters, OSM recognizes the need for blasting levels which prevent damage. However, in review of the data contained in Figure 46 of RI8507, OSM observes that the lowest damage value associated with blasts affecting plaster-on-lath interiors was 0.72 inch per second on "structure 27," and the lowest value affecting gysum-board interiors was about 0.79 inch per second on "structure 20." Structures such as "51" (plaster/lath/brick), "19" (plaster/lath), and "58" (gypsum board/brick) showed the occurrence of threshold damage at blasts ranging from 0.85 to 5.75 inch per second with the majority of points between 1.0 and 3.0 inches per second.

Imposing a ground-vibration level of 0.5 inch per second for such structures would protect these structures, but OSM believes this level is overly conservative. A value of 0.75 inch per second would also have provided protection. OSM believes that if a blast is designed to avoid exceeding the limit, the design level will have to be far less than the maximum, because predictability of the maximum particle velocity is difficult unless a conservative scaled-distance equation is applied. OSM expects that blast designers would have to use design criteria of 0.3 to 0.5 inch per second to meet a 0.75-inch-per-second performance standard. Under a 1.0-inch-per-second standard, only rarely are values expected actually to reach the maximum levels. Actual recorded vibration levels are expected to range from 0.30 to 0.90 inch per second. The setting of particle velocity limits, rather than specifying design parameters for different types of structures ensures protection and allows the blaster reasonable latitude in conducting the shot. Such practices ensure protection consistent with the parameters of the RI8507 study (Siskind and others, 1980) without penalizing the operator by restrictive performance levels. The possibility of every blast reaching a constant 1.0-inch-per-second level is small. Furthermore, an occasional blast which reaches that level does not present a high degree of damage potential. Additionally, if blasting levels do consistently reach the prescribed standard and the regulatory authority considers this a potentially damaging level, it is authorized in §816.67(d)(3)(ii) to reduce the allowable maximum standard to a lower value.

One commenter agreed that the concepts applied by OSM were valid, but disagreed with the specific values proposed and the claimed oversimplification of the ground-vibration issue. The commenter recommended a constant 1.0-inch-per-second standard be mandated in the final rule. OSM, in developing the final rule, has incorporated suggestions from various commenters and under § 816.67(d)(2)(i) has applied a constant 1.0-inch-per-second value over a normal operating range of 300 to 5,000 feet, recognizing the occurrence of high frequency close to structures and low frequencies which would exist if the vibration intensity carried beyond 5,000 feet. This does not preclude low frequency from occurring in close-in blasts or high frequency from occurring at distances greater than 5,000 feet. However, based on the data found in RI8507, a constant 1.0-inch-per-second standard would have prevented at least 85 percent of the damage points, and it is noted that 15 observations produced no damage above the 1.0-inch-per-second particle-velocity level.

In § 816.67(d)(20)(i), ground-vibration limits within 300 feet and beyond 5,000 feet are different from the 1.0-inch-per-second standard. Based on the predominant occurrence of high frequency vibration near the blasting site, OSM allows a 25-percent higher particle-velocity limit within 300 feet of a blasting site. The higher level would only be allowed for residences within 300 feet after owner approval and when prior blast designs must also be submitted to the regulatory authority. The additional constraints when blasting within 300 feet, as well as the probability of higher frequencies, justify the increase to 1.25 inches per second.

Conversely, at distances beyond 5,000 feet, levels at 0.75 inch per second must be observed with due regard to the potential for potentially damaging low frequency vibrations.

Commenters called OSM's attention to the study conducted at the Wright Mine in Warrick County, Ind., by Braile and others (1982). This study only dealt with the propagation of ground-vibration waves: data was observed for the site-specific geology and geologic type but no analysis of damage was conducted. The conclusions support the limits on blasting which produces low frequency ground vibrations and long duration surface waves, because such occurrences raise damage potential as well as result in annoyance to residents. The study concludes that vibrations at 5,000 feet could be perceptible and disturbing to persons inside a structure. However, the study does not indicate a damage threshold for these low frequency waves. Other studies suggest that the results achieved by the peak-particle-velocity standards prescribed today will prevent damage from low frequency blasts. Because OSM is statutorily charged only to prevent damage to structures and injury to persons, OSM has based blast limits on avoidance of physical injury or damage rather than annoyance.

Many commenters suggested that OSM consolidate proposed Options 1 and 3, while others supported variable peak particle velocity as a function both of frequency and distance from the blasting site. Several commenters recommended proposed Option 1 because it (1) Considered levels of protection by structure type as well as frequency and (2) allowed a 2.0-inch-per-second maximum peak particle velocity under some site-specific conditions, whereas Options 2 and 3 apply generally conservative limits and equations. Based on these comments, OSM has adopted a variant of Option 1 in the form of Figure 1 as an alternative method of determining peak particle velocity. This provision, § 816.67(d)(4), provides a site-specific approach to blasting restrictions based on carefully monitored frequency of the blast and provides adequate flexibility for State program adaption. The derivation of the values used in this alternative is described below.

An operator-commenter preferred proposed Option 1 because it allowed limits to be set based on site-specific conditions. Other commenters objected to Option 1 because it contained values believed to be too permissive and would

be difficult to implement due to the variety of structure types, frequency verification, and monitoring constraints. The commenters also felt that levels for Type 4 structures would be too restrictive. OSM believes that the final rule reflects the positive aspects of Option 1, flexibility and site-specific levels, but only places the requirement of stringent monitoring and data development on those choosing to undertake such a sophisticated approach. OSM has decided not to adopt different standards for different types of structures because such a rule would be unnecessarily complex, would require an extensive analysis of structures surrounding the blasting site and would be difficult to enforce.

Some commenters expressed support for the Option 1 standards, because it appeared to be the only limit restricting ground vibration at the location of utilities (buried pipes, etc.). OSM did not intend that Option 1 be the only protection for pipelines, underground mines, water towers, impoundments, and tunnels, but recognizes that these structures are less susceptible to damage than buildings and residences. Therefore, OSM has included a provision under § 816.67(d)(1) to limit ground vibration at such structures as determined by the regulatory authority. Currently, the Mine Safety and Health Administration requires levels less than or equal to 2.0 inches per second for underground mines.

Some commenters preferred Option 3, but suggested a modification to allow values greater than 1.0 inch per second in areas specifically approved by the regulatory authority. In the new rule being adopted, OSM has incorporated two provisions allowing such values. First, at distances less than 300 feet an upper limit of 1.25 inches per second has been established in § 816.67(d)(2)(i) because of the frequency considerations; however, as noted throughout the comments, lack of substantiating data precludes incorporating limits in excess of 1.0 inch per second as proposed in Option 2 for distances between 300 and 3000 feet. Second, the use of alternative blasting criteria under § 816.67(d)(4), the limits of which are specified in Figure 1, will allow values up to 2.0 inches per second if site conditions warrant for blast frequencies in excess of 30Hz.

A commenter suggested that the only acceptable safe blasting criteria would be a variable limit with frequency similar to proposed Figure 1, or the use of response-spectra analysis requiring investigation of the natural frequency of the structure to be protected and relating this information to the blast vibration frequencies. OSM acknowledges that response-spectra analysis as used in the RI8507 study (Siskind and others, 1980) and by vibration consultants provides a unique solution because it sets allowable limits accurately by predicting the range of potential damage. However, OSM believes that a much more general standard must be authorized for application at coal mines where 200 to 1,000 houses may be involved. OSM does not want to discourage the use of response-spectra analysis, especially where a regulatory authority determines that a lower standard should apply. This technique if applied on a case-by-case basis might prove to be the best substantiation of the actual damage range. In order to allow such technique and to provide operators the option to increase particle velocities above the maximum limits set for general compliance, OSM has included in § 816.67(d)(4) an alternative method using Figure 1. Using this option requires monitoring of particle velocity at the frequency levels, which may be augmented by response spectra for confirmation of the structure's interaction with the monitored wave forms. In using this alternative, the seismographic record will provide evidence of regulatory compliance, as well as evidence of damage potential for information of nearby homeowners.

A commenter, objecting to all options presented in the proposed rules, cited difficulty in the application of proposed Option 1, disputed the assumption that frequency decreases linearly with distance from the blasting site as found in proposed Option 2, and did not like the inclusion of the alternative blasting criteria under proposed Option 3.

Commenters also believed that proposed Option 3 ignored structural response, claiming that single value limits are an oversimplification of blasting effects and misleading to further study.

As described above, the new rule combined the three options; it allows the application of three levels of ground-vibration control: (1) Seismic monitoring of peak particle velocity, (2) use of a scaled-distance equation without monitoring, and (3) complex monitoring of velocity at associated frequencies. Each allows a somewhat different approach to control of blasts, but each provides equivalent levels of damage prevention.

Several commenters suggested adding the use of vector-sum seismographs to the peak-particle-velocity component concept of § 816.67(d)(1)(i). OSM recognizes that some monitoring equipment records vector sum and that requiring component seismographs may be expensive for the operator. To avoid this unnecessary burden, OSM has allowed, but does not require, the use of vector-sum units. The Bureau of Mines has concluded that component velocity is the best indicator of damage potential and thus recommends limits and readings be in component format. The values listed for acceptable vector sum limits are identical for component limits, ensuring conservative results when using a vector-sum instrument. OSM recognizes that this will produce conservative monitoring standards, but a general conversion of component to vector-sum equivalent is not available.

Commenters were concerned that OSM's 1.0-inch-per-second standard would not provide adequate protection of sensitive structures. OSM believes that the limit of 1.0-inch per second over the range from 300 to 5,000 feet does set a limit which considers structural response. Setting a universally applied limit assumes that structures to be protected have natural frequencies in the range of 10–20 Hz (hertz). At frequencies between 10 and 20 Hz the safe vibration level recommended in RI8507 ranges between 0.75 and 1.40 inches per second. As indicated in OSM's evaluation of data from RI8507, the range of threshold damage appears to begin at levels greater than 1.0 inch per second. Therefore, a 1.0-inch-per-second standard provides protection within this range over the broad range of distances.

A commenter objected to the prohibition placed on mining within 300 feet of a dwelling without owner approval and within 300 feet of public buildings. The commenter felt that such limitations were inappropriate and could interfere with maximum coal recovery. Section 522 of the Act prohibits any mining operations within 300 feet of public buildings or dwellings (without owner consent) subject to valid existing rights. Rules governing these areas are set forth at 30 CFR Parts 761 and 769. It would be duplicative to restate them in conjunction with the blasting rules. Accordingly, the proposed language in § 816.67(d) has not been adopted.

Section 816.67(d)(1) sets levels for structures other than buildings. This new rule places the burden of setting particle-velocity limits for these structures on the operator and the regulatory authority. Operators would propose standards for structures, and the regulatory authority would approve or modify them.

Various commenters made recommendations regarding scaled-distance equations, a variant of which was proposed for all three options. Some commenters agreed with the correlation values proposed (e.g., $Ds=55$ correlating to 1.0 inch per second) while others believed that $Ds=60$ should be used to correspond to 1.0 inch per second, stating that it would better meet the requirements of the Act. Another commenter objected to the use of scaled distance as a safe blasting criterion. That commenter presented information attempting to refute the accuracy of scaled distance as a predictor at any specific value. OSM based the correlation values proposed (47 FR 12768) on the blast data contained on pages 10–17 of the RI8507 study and believes use of scaled distance will prevent damage in more than 99 percent of blasts as described below.

The use of the scaled-distance equations of § 816.67(d)(3) provides an operator with the option of not monitoring every blast to ensure compliance with the specified maximum ground-vibration level. Siskind and others (1980) in the RI8507 study collected and consolidated blast vibration data from blasting at various distances and blasting parameters. When displayed and analyzed, these data provide a line representing the mean occurrence of a specific particle velocity for a specified scaled-distance level. The equation adopted in § 816.67(d)(3) divides distance from the blast to the structure to be protected by a scaled-distance factor to yield the square root of the total charge weight of explosives which may be detonated in any 8-millisecond period: $(D/Ds)=/W$, where D=the distance from the blast to the structure to be protected, Ds=the scaled-distance factor, and W=the charge weight of explosives.

The values of ground vibration measured at location D from the blast reflect the actual measured ground vibration. Mean curves were developed as part of the RI 8507 study based on the actual ground vibrations measured. (See p. 14 of the RI 8507 study.) The mean portrayed thereon reflects an averaging of values above and below the curve at any scaled-distance factor. The curve representing a 95–percent-confidence level for specific vibration levels is obtained statistically, resulting in a similar curve two standard deviations above the mean. This results in a level providing 95-percent confidence that actual monitoring will fall at or below the predicted ground vibration. OSM has selected scaled-distance factors taken from the standard deviation curve. Coupled with the remote possibility of damage at the predicted level, these factors will afford a degree of protection in excess of 99 percent for the structure to be protected.

Some commenters felt that the proposed scaled distance of 70 in Option 1 was too conservative. Under the final rule, the maximum scaled-distance factor will be 65. Under the tables in new §§ 816.67(d)(2)(i) and 817.67(d)(2)(i), the scaled distance of 65 is applied only when the distance to the nearest building is greater than 5,000 feet. This will allow the use of a maximum of 5,900 pounds of explosives per 6-millisecond delay period at a distance of 5,000 feet. OSM does not believe this limit will constrain an operator unduly since explosive technology has developed delay blasting techniques available to conduct large blasts using this amount per delay. The scaled-distance denominator of 65 corresponds to a 0.75-inch-per-second peak particle velocity. In setting this peak particle velocity, OSM recognizes the need for lower ground vibration at locations of lower frequency. After traveling 5,000 feet, the intensity of a seismic wave should dissipate below the 0.75 peak-particle-velocity level; thus the standard should rarely be exceeded.

Some commenters contended that the proposed equation $W=D^{1.5}/90$ in Option 2 was too conservative for the large areas blasted in the West. OSM has not adopted that optional equation because it was too stringent at long distances and not stringent enough when structures were within 500 feet. Therefore, its applicability would have been limited to the distances between 1,000 and 3,000 feet, whereas the scaled-distance equation adopted in this new rule, using $Ds=55$, can be applied at distances between 300 and 5,000 feet.

OSM believes that the 55 level for Ds over the 300 to 5,000 foot range provides sufficient protection; as described earlier, a 1.0 inch-per-second level reflects an appropriate standard to provide damage protection.

Section 816.67(d)(3)(ii) allows the operator flexibility in modifying the scaled-distance factor Ds to allow for higher or lower scaling factors. The provision requires that after the operator correlates the mean occurrence of particle velocity with scaled distance, the modified value for the scaled-distance factor Ds must reflect a point that is two standard deviations above the mean regression curve. This correlation value provides a 95-percent-confidence level that the maximum allowable particle velocity will not be exceeded. A technical guidance document will be made available by OSM demonstrating the application of the modified equation and its derivation.

One commenter suggested that a lower limit be established on modified scaled-distance below which the regulatory authority would not set a standard. OSM has not accepted the suggestion. OSM believes that a 1.0-inch-per-second standard over the normal working distances provides adequate protection in general blasting practice, but recognizes that structure condition, geology, and vibration frequency affect damage potential and are site specific. The Act requires site-specific limits for use of explosives, and values as low as 0.5 inch per second may be necessary. The setting of a lower value is more appropriately left to the discretion of the regulatory authority at the time of evaluating the site-specific conditions.

Certain site-specific conditions warrant higher bore hole loadings per delay, but protection of people and property must be assured. Other site-specific conditions may warrant reduction of allowable peak particle velocity and the lowering of the weight of explosives per delay (i.e., higher scaled-distance factors). The provisions of § 816.67(d)(5)(ii) require the regulatory authority to take action if necessary to provide damage protection. Critical factors in assessing damage probability include distance to the nearest structure and charge weight.

A commenter objected to the proposed term "in the vicinity of the mine" with respect to proposed § 816.67(d)(3)(iii) which would have required regulatory authorities, upon requests from owners and residents, to evaluate the maximum allowable ground-vibration standard. The same commenter felt that "vicinity" could mean 100 feet or 100 miles. The commenter suggested that such requests be limited to structures within one-half mile of the permit area. OSM believes that the proposed provision is unnecessary. Upon request from a resident, or for any other reason, the regulatory authority may require seismic monitoring of blasts and may reduce ground vibration limits if conditions warrant. Thus, the regulatory authority has ample authority to protect those in the vicinity of the blasting.

As mentioned above, § 816.67(d)(4) presents a third optional ground-vibration standard. This is based on the standard proposed as Figure 1 in Option 3 in the proposed rule. It requires more stringent monitoring than the normal peak particle velocity and allows more flexibility to operators to use greater

charge weights. The limits are set forth in a graphic distribution of maximum allowable particle velocity versus blast vibration frequency. These are shown in a new Figure 1 to be included as part of the rule. Commenters requested that the limits of proposed Figure 1 be revised. Several commenters wanted this criterion to be the only one to apply to regulation of ground vibration. Others objected to the use of the criterion altogether and suggested its deletion. OSM has included the criterion as an alternative to allow flexibility by operators and regulatory authorities if they wish to conduct the more extensive monitoring required. The alternative blasting criterion (new Figure 1) differs slightly from that proposed. One commenter suggested retention of the proposed curve above 20 Hz, but a limit of 1.0 inch per second for the portion of the curve below 20 Hz. Another commenter provided a rationale for adjusting the cutoff point for the 2.0-inch-per-second standard from 40 Hz to 30 Hz, since the interaction with an amplification of natural frequencies of residential structures primarily occurs in the 5 to 20 Hz range. The suggestion to rely on a constant 1.0-inch-per-second limit up to 20 Hz has been rejected because it fails to acknowledge the impact of predominant low-level blast vibration frequency within the range of 5 to 10 Hz.

In determining the values in Figure 1, OSM has adopted the Bureau of Mines proposal cited in Appendix B of RI8507 (Siskind and others, 1980). For frequencies up to 4 Hz, a constant maximum amplitude of 0.030 inch will be allowed. (Under this standard, amplitude is related to particle velocity through the use of the equation $V=2\P fA$, where V is the particle velocity, f is the frequency, and A is the amplitude.) Over this frequency range the maximum allowable particle velocity increases from 0.19 inch per second to 0.75 inch per second. At frequencies of 4 through 11 Hz a constant allowable particle velocity of 0.75 inch per second is set.

The level over the range 4 to 11 Hz was set at 0.75 inch per second rather than 1.0 inch per second to acknowledge the need to reduce particle velocity at low frequencies. Over the frequency range of 11 through 30 Hz, a constant amplitude of 0.0107 inch is allowed. This correlates to maximum particle velocities of 0.75 inch per second to 2.0 inch per second. Above 30 Hz, a constant peak particle velocity of 200 inches per second will be allowed.

A commenter cited concern with varying threshold levels on the basis of structure type and vibration frequency and allowing a maximum level of 2.0 inches per second. These commenters felt that proposed Option 1 would be the most beneficial in regulating the industry. OSM does not believe that a general limit of 2.0 inches per second provides adequate protection. In the previous rules, a peak particle velocity of 2.0 inches per second was allowed in some instances only when applying stringent monitoring techniques. In the final rule, the particle-velocity standard sought by the commenter is allowed under § 816.67(d)(4) at frequencies above 30 Hz, but only under well-monitored and controlled conditions that require seismic monitoring using equipment recording both particle-velocity data and vibration frequency levels to assure continuous compliance.

A commenter raised the problem of determining predominant frequency in applying proposed Option 1 dealing with the structure tables. This problem also exists in implementing the alternative blasting criteria of Figure 1. Therefore, a provision has been added to § 816.67(d)(4) to require approval of the method to be used in evaluating and ultimately establishing the predominant frequency at which vibration levels occur.

A commenter felt that the proposed alternative blasting criterion of Figure 1 was overly stringent and too expensive for most operators. They also were concerned about the possibility of rendering existing monitoring equipment obsolete by this rule. OSM has included new Figure 1 in the final rule for optional application. Some operators may find the economic outlay beneficial to production and the protection of nearby structures; those who do not need not use this alternative method of determining maximum ground vibration. Other provisions of the rules allow conventional monitoring and use of equations without monitoring.

Commenters requested clarification as to what was required to evaluate blast vibration frequency. They wanted to know whether visual inspection of seismographic records was adequate or whether electronic anlaysis of frequency would be required. Under § 816.67(d)(4), which requires regulatory authority approval of the method of analysis of the predominant frequency contained in the blasting records, visual inspection may be adequate if traces are distinct and only a few frequencies are contained in the wave-form. However, seismographic consultants have found that various waves with multiple frequencies typically are contained in the blasting record. In those cases, electronic analysis is necessary to separate the wave traces and analyze each intensity and frequency. OSM does not intend to mandate electronic analysis; rather the determination of what type of analysis is appropriate should be made by the regulatory authority.

Commenters did not believe that frequency analysis, which requires sophisticated equipment, should be required in all cases. Except when the criteria of § 816.67(d)(4) are used, the final rule leaves frequency analysis to the discretion of the regulatory authority. OSM recognizes its value as an indicator of vibration damage probability, but also recognizes the complexity and expense in its application, as well as the uncertainties in determining specific frequency levels.

Commenters referred to human annoyance from blast vibrations. Human response has been addressed by the RI8507 study (Siskind and others, 1980) and other researchers in the ground-vibration field. OSM concludes that the limits on airblast provide the most appropriate basis for minimizing disturbance to nearby residents. In addition, there does not appear to be a standardized correlation between ground vibration levels and degrees of annoyance, apart from injury and damage. OSM believes that through an effective public relations program and communication with nearby residents much anxiety over annoyance can be mitigated.

A commenter complained that OSM had not satisfied its obligations under the Administrative Procedure Act (APA) by indicating a preferred course of action. The APA requires that an agency publish an explanation of its proposed action sufficient to allow for meaningful comments. Due to the complexity of these issues OSM devised several regulatory approaches and has explained each of them with sufficient specificity to attract the numerous comments it has received. A decision on which option to adopt was not made until after evaluation of all the comments received. This new rule adopted by OSM falls well within the range of the alternatives proposed.

Section 816.67(e)

New § 816.67(e) excludes from ground vibration and airblast limits structures owned by the operator and those owned by the operator and leased to others if waivers are obtained from the lessees. Commenters requested that the exclusion for structures owned by the operator and leased to others apply to all options. This was the intent of the proposed rule, but was misinterpreted

as applying only to Option 3. This section has been retained in the final rule as § 816.67(e).

Section 816.68. Use of explosives: Records of blasting operations. As proposed, the new § 816.68 requires the operator to maintain blasting records for at least 3 years and to make them available for inspection by the regulatory authority or the public on request. This is required in Section 515(b)(15)(B) of the Act. Among the information which must be included is the name of the operator; the location, date, and time of the blast; the name signature, and certification number of the blaster conducting the blast; identification, direction, and distance from the nearest blast hole to the nearest dwelling or other structure outside the permit area; weather conditions described in more detail below; the type of material blasted; sketches of blast pattern including number of holes and the burden, spacing, decks, and delay pattern; the diameter and depth of holes, the type of explosives used; the total weight of explosives used per hole; the maximum weight of explosives detonated within any 8-millisecond period; the initiation system; type and length of stemming; and mats or other protection used.

Section 816.68(o) includes the requirement that if seismographic and airblast records are required, they should include a record of the instrument type, its sensitivity and calibration signal or the certification of annual calibration; location, date, time, and distance the instrument is from the blast; the person's name and firm who obtained the readings, and the person's name and firms analyzing the seismographic record; and vibration and/or airblast levels recorded. In addition § 816.68(p) provides that information stating the reasons and conditions for each unscheduled blast shall be contained within the record.

Commenters objected to deletion of specific weather characteristics listed in the previous rules. These commenters reasoned that these conditions may assist in determining adverse effects due to blasting focused by weather such as: clouds, wind, and temperature inversions. OSM believes the commenter is correct, but a blaster in the field may not know if an inversion exists or what the specific wind velocity is. The requirement of this data could result in inaccurate entries leading to false interpretation of impacts of weather. OSM acknowledges the potential impacts on blasting of temperature inversions, wind direction, and velocity and has inserted a provision for the blaster to estimate any adverse weather conditions which might exist.

A commenter objected to the deletion of previous § 816.68(1) establishing the number of holes to be detonated in any 8-millisecond-delay period because providing this information places no great burden on the operator. OSM believes this information summarizes data which are insignificant in the total blast record and are not necessary for assuring compliance with the rules. Another commenter believed that physical separation can provide the same effect as an 8-millisecond delay. OSM agrees. The 8-millisecond separation was determined by the Bureau of Mines as the minimum delay period to separate charges to reflect nonadditive ground-vibration levels when measured at some distance from the blast. However, this concept assumes that delay holes are at the same distance from the seismograph. In situations where holes are varying distances from the recorder, physical distance separation will delay arrival times of the ground vibration at a structure. This is variable, dependent on the velocity that the seismic wave travels in the specific geologic material.

A commenter objected to OSM's proposed deletion of the requirement that operators keep a record of the number of persons in the blasting crew. OSM believes that a specific number of persons should not be regulated on a national basis. The entry in OSM's old rules served the requirement governing crew size found in 30 CFR Part 850 which has been proposed for change. If a crew size is imposed by a State program, an appropriate entry could be required by the State. Accordingly, OSM has adopted no change to reinstate this entry.

A commenter suggested amending the entry under § 816.68(o)(3) to include the name of the person and firm conducting seismographic tests. OSM believes this to be an acceptable inclusion. Accordingly, OSM has adopted this requirement.

A commenter suggested including the frequency of recorded blast vibration in the seismic record. Not all records produced by seismographs in use in the industry today produce frequency spectra. Most recordings must be analyzed on complex systems to identify trace frequencies as expressed in the RI8507 report (Siskind and others, 1980). As discussed above, the use of a vibration criterion based on frequency monitoring is required in § 816.67(d)(4) in those situations where such sophistication is necessary. However, imposing this condition on all monitored blasts would be overly stringent and unnecessary.

A commenter objected to inclusion of the amount of information required by proposed § 816.68(g) stating that sketches should only be required if blasts are conducted within 1,000 feet from a dwelling or other structure. OSM believes the record is important for reference purposes to ensure the mitigation of damage. Moreover, OSM's regulation of aspects of the blast such as burden, spacing, decking, and delays is mandated by the Act. Other information proves valuable if a complaint arises. Also, an operator who maintains this type of record may revise future blast design if problems occur. OSM believes this degree of information is within that envisioned by the Act, and the final rule adopts the requirement. Commenters also felt that too much information was required for a single sketch. OSM accepts the comment that a single sketch may be cluttered and allows multiple sketches to reflect this information if a single sketch cannot be made.

A commenter believed that all blasts should be certified as designed by a certified blaster in the record. OSM does not require every blast to be designed by a certified blaster. Rather, they must be carried out by certified blasters. Since blast patterns and delays may be designed by someone other than the blaster carrying out the blast, the name of the designer may not be available. Furthermore, OSM requires certifications of blast designs when blasting is conducted within 1,000 feet of structures. OSM therefore has not added such a provision to its recordkeeping rules.

A commenter suggested limiting the data kept in records required by § 816.68(j) on explosives to total explosives used per blast rather than explosives per hole. OSM believes this information is necessary to evaluate the amount of explosives per delay. Furthermore, the per-hole information requirement is taken from the Section 515(b)(15)(B) of the Act. OSM agrees that total charge weight information is important, but recognizes that it is available by totalling all holes. Therefore, it is not considered to be necessary as additional data to be entered. Accordingly, OSM has not adopted such a provision.

A commenter requested that a provision be made in § 816.68(o) to allow "annual calibration" to relieve operators from showing calibration signals on each record. The commenter argued that some seismographs do not

have calibration signals integral with the records. OSM has adopted this provision in the final rule.

A commenter suggested deletion of the requirement in proposed § 816.68(o)(2) for location of the instrument and the date and time of the blast. OSM believes that this information is necessary to ensure that the operator is utilizing the monitoring system agreed to in the permit, and that the data recorded can be traced to a specific blast.

A commenter requested deletion of the requirement in proposed §816.68(p) of the names of persons notified when unscheduled blasts are conducted. As discussed above in conjunction with § 816.64(a)(2), OSM is deleting the requirement of verbal notification of area residents of unscheduled blasts. Instead, audible signals will be used. Weather and other site-specific conditions which necessitate unscheduled blasts may not allow notification to individual residences. Accordingly, OSM does not require records of individuals notified.

A commenter requested confirmation of the availability of blasting records to the public. Both § 816.68 and the Act require the operator to provide access to the blasting records for public inspection upon request. A commenter objected to the degree of detail made available to the public in the records required by § 816.68, stating that it exceeds the requirements of the Act. OSM recognizes that the information required in § 816.68 exceeds that specifically listed in Section 515(b)(15)(B) of the act. OSM requires additional information to evaluate the performance levels of rules implemented pursuant to Sections 515(b)(15)(C), (D), and (E) and 719 of the Act. The additional information relates to performance standard found in §§ 816.61 through 816.67. Such information is necessary to determine whether performance levels were attained. Segregating in the record the items listed in the Act to be available for public inspection is impractical and unnecessary. The commenter failed to demonstrate any harm that would occur through the public disclosure of the additional information. OSM therefore, has chosen to require the entire blasting record to be made available for public inspection.

Rules governing use of explosives associated with underground mining. The performance standards adopted in this rule governing the use of explosives associated with underground mining are identical to those governing surface mining except as noted below. Most offsite impacts, such as airblast and ground vibration, for surface blasting incident to underground mines are not substantially different from those for blasting at surface mines. OSM only regulates the surface impacts of blasting from underground mines, which are derived almost exclusively from surface blasting associated with such mines. This is not a change from the previous rules which also only regulated surface blasting activities incident to underground mining.

Only one difference exists between the two sets of rules in Parts 816 and 817. This relates to the use of blasting schedules. Rather than requiring a blasting schedule, § 817.64 will require weekly notice prior to any surface blasting in support of underground coal mining. Because of the occasional, sporadic nature of surface blasting in support of underground coal mining, the public will be sufficiently served by receiving notification weekly, but not less than 24 hours before any blasting occurs. The mine operator also will be relieved of the task of publishing and republishing a blasting schedule.

Blast design. OSM had proposed to place blast designs among the permitting requirements of § 780.13 for surface mines. No similar planning requirement was included for underground mines because blasting plans are not required for underground mines.

As described above, in adopting the final rules governing surface mines, OSM has shifted the requirement for blast design from the blasting plan section to the general performance standards requirement. This has been done for several reasons: (1) To emphasize the fact that the requirement for special information when blasting within sensitive areas is not a prohibition of mining within these areas, but a protection of structures more likely to suffer damage; (2) To ensure that blast designs are prepared in advance for blasting in areas where the possibility of damage is greatest; (3) To provide the regulatory authority with the greatest information when blasting will be conducted in sensitive areas to allow for monitoring or review of blast designs.

A number of commenters urged that blast designs also be required for underground mines. Because surface blasts may be equally damaging when associated with underground mines, OSM has adopted a requirement in § 817.61(d) identical to the blast design requirement of § 816.61(d).

Blasting schedules. Several commenters objected to the proposed retention of the previous 24-hour notice requirement for notification of local residents within one-half mile of the blasting site in proposed § 817.64(a). Since underground mines have a reasonably constant area of surface disturbance and the time period in which surface blasting would be performed is limited, OSM has rewritten the notification provisions for underground mines to require notification of residents within the ½ mile of the blasting site and local governments. The rule also allows weekly schedules to be distributed. This concept is envisioned to provide the advanced written notice required by statute, while recognizing the infrequent and limited blasting operations used in surface operations of underground mine development. The rule allows daily notification as in the previous rule, but also allows an operator to publish a schedule of weekly blasting events to avoid daily notification. This final rule is envisioned to allow flexibility in use of notification procedures.

Signs and markers. It was mentioned by several commenters that the introductory language to proposed § 817.66(a) used the wrong wording for the underground section. This has been corrected by removing the introductory language and restructuring the provision to parallel § 816.66. New § 817.61(a) limits the applicability of § 817.66 to surface blasting activities incidental to underground coal mining.

Addition of Figure 1. The addition of Figure 1 to §§ 715.19(e)(2)(ix), 816.67(d), and 817.69(d) is discussed in the preamble under the "Ground Vibration" section.

III. Procedural Matters

Federal Paperwork Reduction Act

The information collection requirements in existing 30 CFR Parts 715, 780, 816, and 817 were approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507 and assigned new clearance numbers 1029–0007, 1029–0036, 1029–0047, and 1029–0048 on April 1, 1981. This approval was identified in "Notes" at the introduction to 30 CFR Parts 715, 780, 816, and 817 under the old numbers R0494, R0606, R0618, and R0619 (all under No. B–190462). OSM has codified the OMB approvals under the new §§ 715.10, 780.10, 816.10, and 817.10 (47 FR 33683, August 4, 1982) and has received new OMB approval of these information collection requirements.

The information required by 30 CFR Part 715 will be used by the regulatory authority in monitoring blasting operations. This information required by 30 CFR Part 715 is mandatory.

The information required by 30 CFR Part 780 will be used by the regulatory authority to determine whether the applicant can meet the environmental protection performance standards of the regulatory program. This information required by 30 CFR Part 780 is mandatory.

The information required by 30 CFR Parts 816 and 817 will be used by the regulatory authority to monitor surface and underground mining activities to ensure that they are conducted in a manner which preserves and enhances environmental and other values of the Act. This information required by 30 CFR Parts 816 and 817 is mandatory.

Executive Order 12291

The DOI has determined that this document is not a major rule and does not require a regulatory impact analysis under Executive Order 12291.

Regulatory Flexibility Act

The DOI certifies that this document will not have a significant economic effect on a substantial number of small entities and therefore does not require a regulatory flexibility analysis under Pub. L. 96-354.

National Environmental Policy Act

Revision of § 715.19 of the initial program regulations is deemed not to be a major Federal action within the meaning of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332, as stated in Section 501(a) of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1251, and a detailed statement on the analysis of the environmental impacts of its revision is not required.

Amendments relating to use of explosives in 30 CFR Parts 780, 816 and 817, have been considered in relation to revisions of certain other rules in OSM's Final Environmental Statement OSM-EIS-1: Supplement. The final supplement is available in OSM's Administrative Record in Room 5315, 1100 L Street, NW., Washington, D.C., or may be obtained by mail from Mark Boster, Chief, Branch of Environmental Analysis, Room 134, Interior South Building, U.S. Department of the Interior, Washington, D.C. 20240. This preamble serves as the record of decision under NEPA. These final rules are the same as the preferred alternatives published in Volume III of the final EIS and analyzed in the EIS.

List of Subjects

30 CFR Part 715

Coal mining, Environmental protection, Surface mining, Underground mining.

30 CFR Part 780

Coal mining, Reporting requirement, Surface mining.

30 CFR Part 816

Coal mining, Environmental protection, Reporting requirements, Surface mining.

30 CFR Part 817

Coal mining, Environmental protection, Reporting requirements, Underground mining.

Agency Approval. Section 516(a) requires that, with regard to rules directed toward the surface effects of underground mining, OSM must obtain written concurrence from the head of the department which administers the Federal Coal Mine Health and Safety Act of 1969. OSM has obtained the written concurrence of the Assistant Secretary for Mine Safety and Health, U.S. Department of Labor.

Accordingly, 30 CFR Parts 715, 780, 816, and 817 are amended as set forth herein.

Dated: February 28, 1983.

William P. Pendley,

Acting Assistant Secretary, Energy and Minerals.

PART 715—GENERAL PERFORMANCE STANDARDS

1. Section 715.19 is amended by revising Paragraphs (e)(2)(ii) and (e)(2)(iii) and removing Paragraphs (e)(2)(iv)–(e)(2)(vi) to read as follows:

§ 715.19 Use of explosives.

* * * * *

(e) * * *

(2) *Blasting standards.* (i) * * *

(ii) *Ground vibration.*—(A) *General.* In all blasting operations, except as otherwise authorized in Paragraph (e)(2)(iii) of this section, the maximum ground vibration shall not exceed a value approved by the regulatory authority. It shall be established in accordance with the maximum peak-particle-velocity limit of Paragraph (e)(2)(ii)(B), the scaled-distance equation of Paragraph (e)(2)(ii)(C), or the blasting-level chart of Paragraph (e)(2)(ii)(D), or such other standard established under Paragraph (e)(2)(ii)(E), of this section. All structures in the vicinity of the blasting area, not listed in Paragraph (e)(2)(ii)(B), of this section, such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines, shall be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the operator and approved by the regulatory authority before the initiation of blasting.

(b) *Maximum peak-particle velocity.* (*1*) The maximum ground vibration shall not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area.

Distance (*D*) from blasting site, in feet	Maximum allowable peak particle velocity (*Vmax*) for ground vibration, in inches/second [1]	Scaled-distance factor to be applied without seismic monitoring [2]
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

[1] Ground vibration shall be measured as particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.
[2] Applicable to the scaled-distance equation of Paragraph (e)(2)(ii)(C)(*1*) of this section.

(*2*) A seismographic record shall be provided for each blast.

(C) *Scaled-distance equation.* (*1*) The operator may use the scaled-distance equation, $W=(D/Ds)^2$, to determine the allowable charge weight of explosives to be detonated in any 8-millisecond period without seismic monitoring; where W = the maximum weight of explosives, in pounds; D = the distance, in feet, from the blasting site to the nearest protected structure; and Ds = the scaled-distance factor, which may initially be approved by the regulatory authority using the values for scaled-distance factor listed in Paragraph (e)(2)(ii)(B)(*1*), of this section.

(*2*) The development of a modified scaled-distance factor may be authorized by the regulatory authority on receipt of a written request by the operator, supported by seismographic records of blasting at the minesite. The modified scaled-distance factor shall be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of Paragraph (e)(2)(B)(*1*) of this section at a 95-percent confidence level.

(D) *Blasting-level chart.* (*1*) An operator may use the ground-vibration limits in Figure 1 to determine the maximum allowable ground vibration.

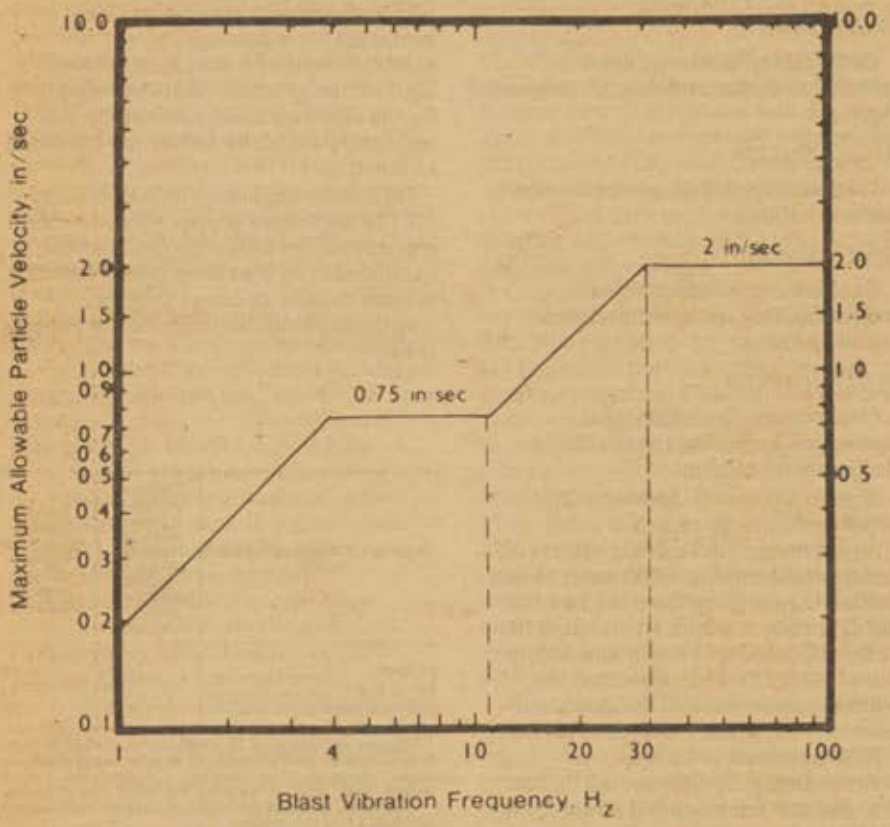

Figure 1 Alternative blasting level criteria

(Source Modified from figure B-1, Bureau of Mines RI8507)

(2) If the Figure 1 limits are used, a seismographic record including both particle-velocity and vibration-frequency levels shall be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting records shall be approved by the regulatory authority before application of this alternative blasting criterion.

(E) The maximum allowable ground vibration shall be reduced by the regulatory authority beyond the limits otherwise provided by this section, if determined necessary to provide damage protection.

(F) The regulatory authority may require an operator to conduct seismic monitoring of any or all blasts and may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(iii) If blasting is conducted in accordance with Paragraph (e)(2)(i) of this section, the maximum ground-vibration and airblast standards shall not apply at the following locations:

(A) At structures owned by the permittee and not leased to another person.

(B) At structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the regulatory authority before blasting.

* * * * *

§ 715.19 [Amended]

2. Section 715.19 is amended by removing Paragraph (e)(3) and redesignating Paragraph (e)(4) as Paragraph (e)(3).

PART 780—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

3. Part 780 is amended by revising § 780.13 to read as follows:

§ 780.13 Operation plan: Blasting.

(a) *Blasting plan.* Each application shall contain a blasting plan for the proposed permit area, explaining how the applicant will comply with the requirements of §§ 816.61–816.68 of this chapter. This plan shall include, at a minimum, information setting forth the limitations the operator will meet with regard to ground vibration and airblast, the bases for those limitations, and the methods to be applied in controlling the adverse effects of blasting operations.

(b) *Monitoring system.* Each application shall contain a description of any system to be used to monitor compliance with the standards of § 816.67 including the type, capability, and sensitivity of any blast-monitoring equipment and proposed procedures and locations of monitoring.

(c) *Blasting near underground mines.* Blasting operations within 500 feet of active underground mines require approval of the State and Federal regulatory authorities concerned with the health and safety of underground miners.

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

§ 816.11 [Amended]

4. Section 816.11 is amended by removing paragraph (f) and redesignating paragraph (g) as paragraph (f).

5. Section 816.61 is amended by revising paragraphs (a) and (b) and adding paragraph (d) to read as follows:

§ 816.61 Use of explosives: General requirements.

(a) Each operator shall comply with all applicable State and Federal laws and regulations in the use of explosives.

(b) Blasts that use more than 5 pounds of explosive or blasting agent shall be conducted according to the schedule required under § 816.64.

* * * * *

(d) *Blast design.* (1) An anticipated blast design shall be submitted if blasting operations will be conducted within—

(i) 1,000 feet of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area; or

(ii) 500 feet of an active or abandoned underground mine.

(2) The blast design may be presented as part of a permit application or at a time, before the blast, approved by the regulatory authority.

(3) The blast design shall contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the pubic and meet the applicable airblast, flyrock, and ground-vibration standards in § 816.67.

(4) The blast design shall be prepared and signed by a certified blaster.

(5) The regulatory authority may require changes to the design submitted.

6. Section 816.62 is revised to read as follows:

§ 816.62 Use of explosives: Preblasting survey.

(a) At least 30 days before initiation of blasting, the operator shall notify, in writing, all residents or owners of dwellings or other structures located within ½ mile of the permit area how to request a preblasting survey.

(b) A resident or owner of a dwelling or structure within ½ mile of any part of the permit area may request a preblasting survey. This request shall be made, in writing, directly to the operator or to the regulatory authority, who shall promptly notify the operator. The operator shall promptly conduct a preblasting survey of the dwelling or structure and promptly prepare a written report of the survey. An updated survey of any additions, modifications, or renovations shall be performed by the operator if requested by the resident or owner.

(c) The operator shall determine the condition of the dwelling or structure and shall document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Structures such as pipelines, cables, transmission lines, and cisterns, wells, and other water systems warrant special attention; however, the assessment of these structures may be limited to surface conditions and other readily available data.

(d) The written report of the survey shall be signed by the person who conducted the survey. Copies of the report shall be promptly provided to the regulatory authority and to the person requesting the survey. If the person requesting the survey disagrees with the contents and/or recommendations contained therein, he or she may submit to both the operator and the regulatory authority a detailed description of the specific areas of disagreement.

(e) Any surveys requested more than 10 days before the planned initiation of blasting shall be completed by the operator before the initiation of blasting.

7. Section 816.64 is revised to read as follows:

§ 816.64 Use of explosives: Blasting schedule.

(a) *General requirements.* (1) The operator shall conduct blasting operations at times approved by the regulatory authority and announced in the blasting schedule. The regulatory authority may limit the area covered, timing, and sequence of blasting as listed in the schedule, if such limitations are necessary and reasonable in order to protect the public health and safety or welfare.

(2) All blasting shall be conducted between sunrise and sunset, unless nighttime blasting is approved by the regulatory authority based upon a showing by the operator that the public will be protected from adverse noise and other impacts. The regulatory authority may specify more restrictive time periods for blasting.

(3) Unscheduled blasts may be conducted only where public or operator health and safety so require and for emergency blasting actions. When an operator conducts an unscheduled blast, the operator, using audible signals, shall notify residents within ½ mile of the blasting site and document the reason for the unscheduled blast in accordance with § 816.68(p).

(b) *Blasting schedule publication and distribution.* (1) The operator shall publish the blasting schedule in a newspaper of general circulation in the locality of the blasting site at least 10 days, but not more than 30 days, before beginning a blasting program.

(2) The operator shall distribute copies of the schedule to local governments and public utilities and to each local residence within ½ mile of the proposed blasting site described in the schedule.

(3) The operator shall republish and redistribute the schedule at least every 12 months and revise and republish the schedule at least 10 days, but not more than 30 days, before blasting whenever the area covered by the schedule changes or actual time periods for blasting significantly differ from the prior announcement.

(c) *Blasting schedule contents.* The blasting schedule shall contain, at a minimum—

(1) Name, address, and telephone number of operator;

(2) Identification of the specific areas in which blasting will take place;

(3) Dates and time periods when explosives are to be detonated;

(4) Methods to be used to control access to the blasting area; and

(5) Type and patterns of audible warning and all-clear signals to be used before and after blasting.

§ 816.65 [Removed]

8. Section 816.65 is removed.

9. Section 816.66 is added to read as follows:

§ 816.66 Use of explosives: Blasting signs, warnings, and access control.

(a) *Blasting signs.* Blasting signs shall meet the specifications of § 816.11. The operator shall—

(1) Conspicuously place signs reading "Blasting Area" along the edge of any blasting area that comes within 100 feet of any public road right-of-way, and at the point where any other road provides access to the blasting area; and

(2) At all entrances to the permit area from public roads or highways, place conspicuous signs which state "Warning! Explosives in Use," which clearly list and describe the meaning of the audible blast warning and all-clear signals that are in use, and which explain the marking of blasting areas and charged holes awaiting firing within the permit area.

(b) *Warnings.* Warning and all-clear signals of different character or pattern that are audible within a range of ½ mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within ½ mile of the permit area shall be notified of the meaning of the signals in the blasting schedule.

(c) *Access control.* Access within the blasting area shall be controlled to prevent presence of livestock or unauthorized persons during blasting and until an authorized representative of the operator has reasonably determined that—

(1) No unusual hazards, such as imminent slides or undetonated charges, exist; and

(2) Access to and travel within the blasting area can be safely resumed.

10. Section 816.67 is revised to read as follows:

§ 816.67 Use of explosives: Control of adverse effects.

(a) *General requirements.* Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of surface or ground water outside the permit area.

(b) *Airblast.*—(1) *Limits.* (i) Airblast shall not exceed the maximum limits listed below at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area, except as provided in Paragraph (e) of this section.

Lower frequency limit of measuring system, in Hz (±3 dB)	Maximum level, in dB
0.1 Hz or lower—flat response [1]	134 peak.
2 Hz or lower—flat response	133 peak.
6 Hz or lower—flat response	129 peak.
C-weighted—slow response [1]	105 peak dBC.

[1] Only when approved by the regulatory authority.

(ii) If necessary to prevent damage, the regulatory authority shall specify

lower maximum allowable airblast levels than those of Paragraph (b)(1)(i) of this section for use in the vicinity of a specific blasting operation.

(2) *Monitoring.* (i) The operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The regulatory authority may require airblast measurement of any or all blasts and may specify the locations at which such measurements are taken.

(ii) The measuring systems shall have an upper-end flat-frequency response of at least 200 Hz.

(c) *Flyrock.* Flyrock travelling in the air or along the ground shall not be cast from the blasting site—

(1) More than one-half the distance to the nearest dwelling or other occupied structure;

(2) Beyond the area of control required under § 816.66(c); or

(3) Beyond the permit boundary.

(d) *Ground vibration*—(1) *General.* In all blasting operations, except as otherwise authorized in Paragraph (e) of this section, the maximum ground vibration shall not exceed the values approved in the blasting plan required under § 780.13 of this chapter. The maximum ground vibration for protected structures listed in Paragraph (d)(2)(i) of this section shall be established in accordance with either the maximum peak-particle-velocity limits of Paragraph (d)(2), the scaled-distance equation of Paragraph (d)(3), the blasting-level chart of Paragraph (d)(4) of this section, or by the regulatory authority under Paragraph (d)(5) of this section. All structures in the vicinity of the blasting area, not listed in Paragraph (d)(2)(i) of this section, such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines, shall be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the operator in the blasting plan and approved by the regulatory authority.

(2) *Maximum peak particle velocity.* (i) The maximum ground vibration shall not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area:

Distance (*D*), from the blasting site, in feet	Maximum allowable peak particle velocity (Vmax) for ground vibration, in inches/second [1]	Scaled-distance factor to be applied without seismic monitoring [2]
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

[1] Ground vibration shall be measured as the particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.
[2] Applicable to the scaled-distance equation of Paragraph (d)(3)(i) of this section.

(ii) A seismographic record shall be provided for each blast.

(3) *Scale-distance equation.* (i) An operator may use the scaled-distance equation, $W=(D/D)^2$, to determine the allowable charge weight of explosives to be detonated in any 8-millisecond period, without seismic monitoring; where W = the maximum weight of explosives, in pounds; D = the distance, in feet, from the blasting site to the nearest protected structure; and Ds = the scaled-distance factor, which may initially be approved by the regulatory authority using the values for scaled-distance factor listed in Paragraph (d)(2)(i) of this section.

(ii) The development of a modified scaled-distance factor may be authorized by the regulatory authority on receipt of a written request by the operator, supported by seismographic records of blasting at the minesite. The modified scale-distance factor shall be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle velocity of Paragraph (d)(2)(i) of this section, at a 95-percent confidence level.

(4) *Blasting-level chart.* (i) An operator may use the ground-vibration limits in Figure 1 to determine the maximum allowable ground vibration.

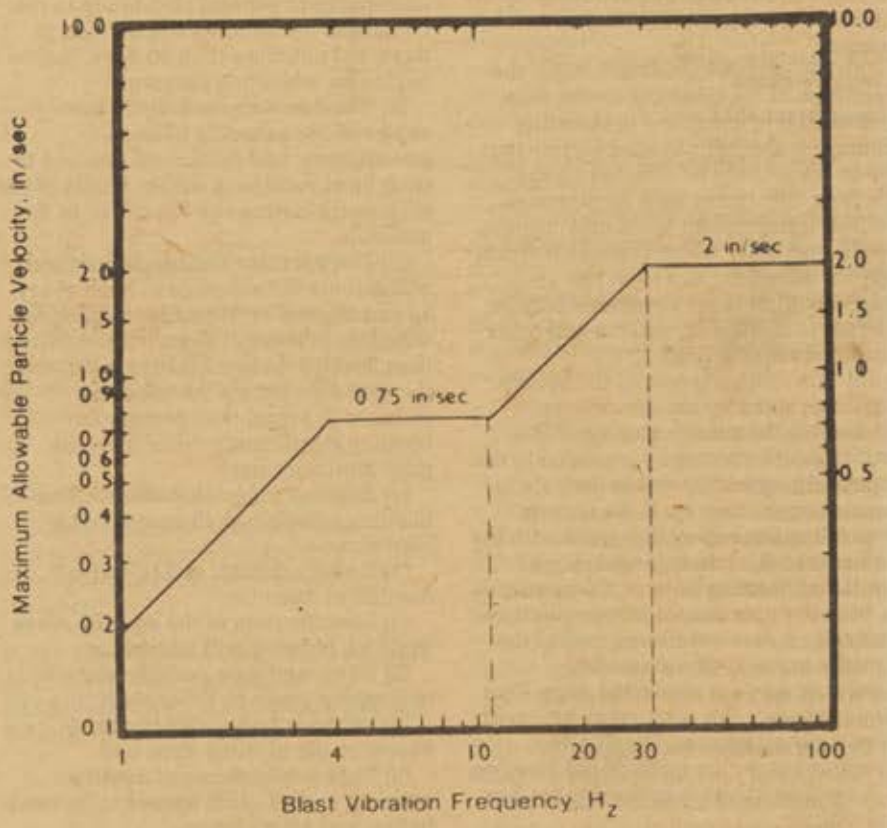

Figure 1 Alternative blasting level criteria
(Source Modified from figure B-1, Bureau of Mines RI 8507)

(ii) If the Figure 1 limits are used, a seismographic record including both particle velocity and vibration-frequency levels shall be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting records shall be approved by the regulatory authority before application of this alternative blasting criterion.

(5) The maximum allowable ground vibration shall be reduced by the regulatory authority beyond the limits otherwise provided by this section, if determined necessary to provide damage protection.

(6) The regulatory authority may require an operator to conduct seismic monitoring of any or all blasts or may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(e) The maximum airblast and ground-vibration standards of paragraphs (b) and (d) of this section shall not apply at the following locations:

(1) At structures owned by the permittee and not leased to another person.

(2) At structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the regulatory authority before blasting.

11. Section 816.68 is revised to read as follows:

§ 816.68 Use of explosives: Records of blasting operations.

The operator shall retain a record of all blasts for at least 3 years. Upon request, copies of these records shall be made available to the regulatory authority and to the public for inspection. Such records shall contain the following data:

(a) Name of the operator conducting the blast.

(b) Location, date, and time of the blast.

(c) Name, signature, and certification number of the blaster conducting the blast.

(d) Identification, direction, and distance, in feet, from the nearest blast hole to the nearest dwelling, public building, school, church, community or institutional building outside the permit area, except those described in § 816.67(e).

(e) Whether conditions, including those which may cause possible adverse blasting effects.

(f) Type of material blasted.

(g) Sketches of the blast pattern including number of holes, burden, spacing, decks, and delay pattern.

(h) Diameter and depth of holes.

(i) Types of explosives used.

(j) Total weight of explosives used per hole.

(k) The maximum weight of explosives detonated in an 8-millisecond period.

(l) Initiation system.

(m) Type and length of stemming.

(n) Mats or other protections used.

(o) Seismographic and airblast records, if required, which shall include—

(1) Type of instrument, sensitivity, and calibration signal or certification of annual calibration;

(2) Exact location of instrument and the date, time, and distance from the blast;

(3) Name of the person and firm taking the reading;

(4) Name of the person and firm analyzing the seismographic record; and

(5) The vibration and/or airblast level recorded.

(p) Reasons and conditions for each unscheduled blast.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

§ 817.11 [Amended]

12. Section 817.11 is amended by removing paragraph (f) and redesignating paragraph (g) as paragraph (f).

13. Section 817.61 is amended by revising paragraphs (a) and (b) and adding paragraph (d) to read as follows:

§ 817.61 Use of explosives: General requirements.

(a) Sections 817.61—817.68 apply to surface blasting activities incident to underground coal mining, including, but not limited to, initial rounds of slopes and shafts.

(b) Each operator shall comply with all applicable State and Federal laws and regulations in the use of explosives.

* * * * *

(d) *Blast design.* (1) An anticipated blast design shall be submitted if blasting operations will be conducted within—

(i) 1,000 feet of any building used as a dwelling, public building, school, church or community or institutional building; or

(ii) 500 feet of active or abandoned underground mines.

(2) The blast design may be presented as part of a permit application or at a time, before the blast, approved by the regulatory authority.

(3) The blast design shall contain sketches of the drill patterns, delay periods, and decking and shall indicate the type and amount of explosives to be used, critical dimensions, and the location and general description of structures to be protected, as well as a discussion of design factors to be used, which protect the public and meet the applicable airblast, flyrock, and ground-vibration standards in § 817.67.

(4) The blast design shall be prepared and signed by a certified blaster.

(5) The regulatory authority may require changes to the design submitted.

14. Section 817.62 is revised to read as follows:

§ 817.62 Use of explosives: Preblasting survey.

(a) At least 30 days before initiation of blasting, the operator shall notify, in writing, all residents or owners of dwellings or other structures located within ½ mile of the permit area how to request a preblasting survey.

(b) A resident or owner of a dwelling or structure within ½ mile of any part of the permit area may request a preblasting survey. This request shall be made, in writing, directly to the operator or to the regulatory authority, who shall promptly notify the operator. The operator shall promptly conduct a preblasting survey of the dwelling or structure and promptly prepare a written report of the survey. An updated survey of any additions, modifications, or renovations shall be performed by the operator if requested by the resident or owner.

(c) The operator shall determine the condition of the dwelling or structure and shall document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Structures such as pipelines, cables, transmission lines, and cisterns, wells, and other water systems warrant special attention; however, the assessment of these structures may be limited to surface conditions and other readily available data.

(d) The written report of the survey shall be signed by the person who conducted the survey. Copies of the report shall be promptly provided to the regulatory authority and to the person requesting the survey. If the person requesting the survey disagrees with the contents and/or recommendations contained therein, he or she may submit to both the operator and the regulatory authority a detailed description of the specific areas of disagreement.

(e) Any surveys requested more than 10 days before the planned initiation of blasting shall be completed by the operator before the initiation of blasting.

15. Section 817.64 is revised to read as follows:

§ 817.64 Use of explosives: General performance standards.

(a) The operator shall notify, in writing, residents within ½ mile of the blasting site and local governments of the proposed times and locations of blasting operations. Such notice of times that blasting is to be conducted may be

announced weekly, but in no case less than 24 hours before blasting will occur.

(b) Unscheduled blasts may be conducted only where public or operator health and safety so requires and for emergency blasting actions. When an operator conducts an unscheduled surface blast incidental to underground coal mining operations, the operator, using audible signals, shall notify residents within ½ mile of the blasting site and document the reason in accordance with § 817.68(p).

(c) All blasting shall be conducted between sunrise and sunset unless nighttime blasting is approved by the regulatory authority based upon a showing by the operator that the public will be protected from adverse noise and other impacts. The regulatory authority may specify more restrictive time periods for blasting.

§ 817.65 [Removed]

16. Section 817.65 is removed.

17. Section 817.66 is added to read as follows:

§ 817.66 Use of explosives: Blasting signs, warnings, and access control.

(a) *Blasting signs.* Blasting signs shall meet the specifications of § 817.11. The operator shall—

(1) Conspicuously place signs reading "Blasting Area" along the edge of any blasting area that comes within 100 feet of any public-road right-of-way, and at the point where any other road provides access to the blasting area; and

(2) At all entrances to the permit area from public roads or highways, place conspicuous signs which state "Warning! Explosives in Use," which clearly list and describe the meaning of the audible blast warning and all-clear signals that are in use, and which explain the marking of blasting areas and charged holes awaiting firing within the permit area.

(b) *Warnings.* Warning and all-clear signals of different character or pattern that are audible within a range of ½ mile from the point of the blast shall be given. Each person within the permit area and each person who resides or regularly works within ½ mile of the permit area shall be notified of the meaning of the signals in the blasting notification required in § 817.64(a).

(c) *Access control.* Access within the blasting areas shall be controlled to prevent presence of livestock or unauthorized persons during blasting and until an authorized representative of the operator has reasonably determined that—

(1) No unusual hazards, such as imminent slides or undetonated charges, exist; and

(2) Access to and travel within the blasting area can be safely resumed.

18. Section 817.67 is revised to read as follows:

§ 817.67 Use of explosives: Control of adverse effects.

(a) *General requirements.* Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of surface or ground water outside the permit area.

(b) *Airblast.*—(1) *Limits.* (i) Airblast shall not exceed the maximum limits listed below at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area, except as provided in Paragraph (e) of this section.

Lower frequency limit of measuring system, in Hz (±3 dB)	Maximum level, in dB
0.1 Hz or lower—flat response [1]	134 peak.
2 Hz or lower—flat response	133 peak.
6 Hz or lower—flat response	129 peak.
C-weighted—slow response [1]	105 peak dBC.

[1] Only when approved by the regulatory authority.

(ii) If necessary to prevent damage, the regulatory authority may specify lower maximum allowable airblast levels than those of Paragraph (b)(1)(i) of this section for use in the vicinity of a specific blasting operation.

(2) *Monitoring.* (i) The operator shall conduct periodic monitoring to ensure compliance with the airblast standards. The regulatory authority may require airblast measurement of any or all blasts and may specify the locations at which such measurements are taken.

(ii) The measuring systems used shall have an upper-end flat-frequency response of at least 200 Hz.

(c) *Flyrock.* Flyrock travelling in the air or along the ground shall not be cast from the blasting site—

(1) More than one-half the distance to the nearest dwelling or other occupied structure;

(2) Beyond the area of control required under § 817.66(c); or

(3) Beyond the permit boundary.

(d) *Ground vibration.*—(1) *General.* In all blasting operations, except as otherwise authorized in paragraph (e) of this section, the maximum ground vibration shall not exceed the values approved by the regulatory authority. The maximum ground vibration for protected structures listed in paragraph (d)(2)(i) of this section shall be established in accordance with either the maximum peak-particle-velocity limits of paragraph (d)(2), the scaled-distance equation of paragraph (d)(3), the blasting-level chart of paragraph (d)(4) of this section, or by the regulatory authority under paragraph (d)(5) of this section. All structures in the vicinity of the blasting area, not listed in paragraph (d)(2)(i) of this section, such as water towers, pipelines and other utilities, tunnels, dams, impoundments, and underground mines shall be protected from damage by establishment of a maximum allowable limit on the ground vibration, submitted by the operator and approved by the regulatory authority before the initiation of blasting.

(2) *Maximum peak-particle velocity.* (i) The maximum ground vibration shall not exceed the following limits at the location of any dwelling, public building, school, church, or community or institutional building outside the permit area:

Distance (*D*), from the blasting site, in feet	Maximum allowable peak particle velocity (*Vmax*) for ground vibration, in inches/second [1]	Scaled-distance factor to be applied without seismic monitoring [2]
0 to 300	1.25	50
301 to 5,000	1.00	55
5,001 and beyond	0.75	65

[1] Ground vibration shall be measured as the particle velocity. Particle velocity shall be recorded in three mutually perpendicular directions. The maximum allowable peak particle velocity shall apply to each of the three measurements.

[2] Applicable to the scaled-distance equation of Paragraph (d)(3)(i) of this section.

(ii) A seismographic record shall be provided for each blast.

(3) *Scaled-distance equation.* (i) An operator may use the scaled-distance equation, $W=(D/Ds)^2$, to determine the allowable charge weight of explosives to be detonated in any 8-millisecond period, without seismic monitoring; where W = the maximum weight of explosives, in pounds; D = the distance, in feet, from the blasting site to the nearest protected structure; and Ds = the scaled-distance factor, which may initially be approved by the regulatory authority using the values for scaled-distance factor listed in Paragraph (d)(2)(i) of this section.

(ii) The development of a modified scaled-distance factor may be authorized by the regulatory authority on receipt of a written request by the operator, supported by seismographic records of blasting at the minesite. The modified scaled-distance factor shall be determined such that the particle velocity of the predicted ground vibration will not exceed the prescribed maximum allowable peak particle

velocity of paragraph (d)(2)(i) of this section, at a 95-percent confidence level.

(4) *Blasting-level chart.* (i) An operator may use the ground-vibration limits in Figure 1 to determine the maximum allowable ground vibration.

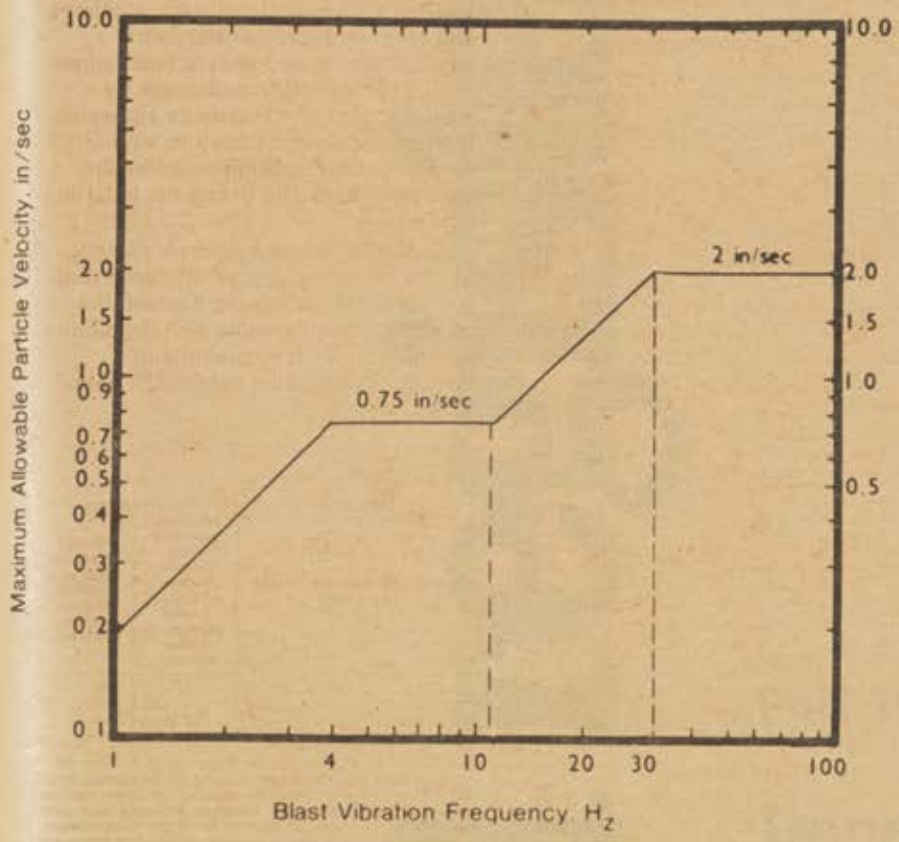

Figure 1. Alternative blasting level criteria
(Source: Modified from figure B-1, Bureau of Mines RI 8507)

(ii) If the Figure 1 limits are used, a seismographic record including both particle velocity and vibration-frequency levels shall be provided for each blast. The method for the analysis of the predominant frequency contained in the blasting records shall be approved by the regulatory authority before application of this alternative blasting criterion.

(5) The maximum allowable ground vibration shall be reduced by the regulatory authority beyond the limits otherwise provided by this section, if determined necessary to provide damage protection.

(6) The regulatory authority may require an operator to conduct seismic monitoring of any or all blasts and may specify the location at which the measurements are taken and the degree of detail necessary in the measurement.

(e) The maximum airblast and ground-vibration standards of paragraphs (b) and (d) of this section shall not apply at the following locations:

(1) At structures owned by the permittee and not leased to another person,

(2) At structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the regulatory authority before blasting.

19. Section 817.68 is revised to read as follows:

§ 817.68 Use of explosives: Records of blasting operations.

The operator shall retain a record of all blasts for at least 3 years. Upon request, copies of these records shall be made available to the regulatory authority and to the public for inspection. Such records shall contain the following data:

(a) Name of the operator conducting the blast.

(b) Location, date, and time of the blast.

(c) Name, signature, and certification number of the blaster conducting the blast.

(d) Identification, direction, and distance, in feet, from the nearest blast hole to the nearest dwelling, public building, school, church, community or institutional building outside the permit area, except those described in § 817.67 (e).

(e) Weather conditions, including those which may cause possible adverse blasting effects.

(f) Type of material blasted.

(g) Sketches of the blast pattern including number of holes, burden, spacing, decks, and delay pattern.

(h) Diameter and depth of holes.

(i) Types of explosives used.

(j) Total weight of explosives used per hole.

(k) The maximum weight of explosives detonated in an 8-millisecond period.

(l) Initiation system.

(m) Type and length of stemming.

(n) Mats or other protections used.

(o) Seismographic and airblast records, if required, which shall include—

(1) Type of instrument, sensitivity, and calibration signal or certification of annual calibration;

(2) Exact location of instrument and the date, time, and distance from the blast;

(3) Name of the person and firm taking the reading;

(4) Name of the person and firm analyzing the seismographic record; and

(5) The vibration and/or airblast level recorded.

(p) Reasons and conditions for each unscheduled blast.

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

[FR Doc. 83-5565 Filed 3-7-83; 8:45 am]
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federal register

Tuesday
March 8, 1983

Part IV

Department of Health and Human Services

Office of the Secretary

Children Involved as Subjects in Research; Additional Protections

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 46

Additional Protections for Children Involved as Subjects in Research

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (Department or HHS) is prescribing additional requirements for protection of children involved as subjects in research. These regulations adopt, with some changes, the recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (National Commission) as were presented in the notice of proposed rulemaking (NPRM) 43 FR 31786 which preceded this final rule.

Specifically, these regulations impose certain added responsibilities on Institutional Review Boards (IRBs) depending on the degree of risk involved in the research and the extent that the research is likely to be a benefit to the subject or relate to a subject's illness. The regulations also set forth requirements for obtaining permission by parents and guardians and, except under certain circumstances, assent by the children themselves. When the child is a ward of the state, the appointment of an advocate is required under some circumstances. The regulations exempt from coverage most social, economic, and educational research in which the only involvement of children as subjects will be in one or more of the following categories: (a) Research conducted in established or commonly accepted educational settings, involving normal educational practices; (b) Research involving the observation of public behavior; (c) Research involving the use of educational tests; (d) Research involving the collection or study of existing data, documents, records or specimens.

EFFECTIVE DATE: These regulations are applicable to all research reviewed after June 6, 1983 by institutional review boards established under an HHS approved Assurance of Compliance.

ADDRESS: Please send comments or requests for additional information to: Denis J. Doyle, Assistant Regulations Officer, Office for Protection from Research Risks, National Institutes of Health, 5333 Westbard Avenue, Room 3A18, Bethesda, Maryland 20205. Telephone (301) 496-7163.

FOR FURTHER INFORMATION CONTACT: Denis J. Doyle (301) 496-7163.

SUPPLEMENTARY INFORMATION: Basic regulations governing the protection of human subjects involved in research funded by HHS (formerly HEW) were first published in the **Federal Register** on May 30, 1974 (30 FR 18914).

In the preamble to those regulations, HHS indicated that it would propose further rules to provide additional protections for research subjects, including children, who may have diminished capacity to provide informed consent.

The National Research Act (Pub. L. 93-348) was signed into law on July 12, 1974, creating the National Commission. One of the charges to the National Commission was to study the nature of research involving children, the purposes of such research, the steps necessary to protect children as subjects, and the requirements for the informed consent of children, their parents or guardians. The National Commission was required to recommend to the Secretary, HHS, policies defining any circumstances under which research with and for children might be appropriate, and to make recommendations to Congress regarding the protection of subjects (including children) involved in research not subject to regulation by HHS.

In discharging its duties under this mandate, the National Commission studied the nature and extent of research involving children, the purposes for which the research is conducted, and other issues surrounding the participation of children in research. Representatives from professional societies, federal agencies, and public interest groups, as well as parents and other members of the public, presented their views to the National Commission at a public hearing. The National Minority Conference on Human Experimentation, convened by the National Commission to solicit minority views, made recommendations to the National Commission on research involving children.

The National Commission also reviewed papers and reports prepared under contract, on topics including informed consent and actual practices in research involving children. Finally, the National Commission conducted extensive public deliberations and developed recommendations on the participation of children in research.

Pursuant to Section 205 of the National Research Act (Pub. L. 93-348), the report and recommendations of the National Commission on research involving children were published in the **Federal Register** (43 FR 2084) on January 13, 1978.

After review of the National Commission's report and recommendations as well as the public comments received, the Secretary published a notice of proposed rulemaking on research involving children in the **Federal Register** (43 FR 31786) on July 21, 1978. In addition to solicitation of comments on the proposed rules, public comments were also sought on the following points: (1) How could the Department provide more useful guidance to IRBs in evaluating whether only a minor increment over minimum risk is involved and (2) further comments, preferably supported by studies, concerning the issues of requiring assent from children, whether an age for requiring assent should be stated, and, if not, whether there should be guidance in the preamble regarding a suggested appropriate age for assent.

OMB Clearance: Reporting and recordkeeping requirements in Subpart A of 45 CFR Part 46 also cover research affected by this subpart. OMB approval for reporting and recordkeeping requirements contained in 45 CFR Part 46, as amended January 26, 1981, was requested and received.

Impact Analysis

Economic Impact on Small Entities—The Secretary certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, Pub. L. 96-354. Since the establishment of an institutional review board and the filing of an Assurance of Compliance is already required by 45 CFR Part 46, Subpart A, this subpart will not necessarily impose requirement which are additional to the basic conditions required of entities for receiving HHS funds to conduct or sponsor human subject research.

Classification of Rule Under E.O. 12291—The Secretary has determined that this rule is not a "major rule" under Executive Order 12291 and thus a regulatory impact analysis is not required. The Secretary's determination is based on the finding that the proposed rule would not:

(1) Have an annual effect on the economy of $100 million or more;

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

(3) Result in significant adverse effects on competition, employment,

investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Response to Public Comment

A total of 127 public comments was received from individuals and organizations in response to the publication in the **Federal Register** of Proposed Regulations on Research Involving Children (43 FR 31786, July 21, 1978). After reviewing the comments and taking into consideration the recently amended Basic HHS Policy for the Protection of Human Research Subjects (Title 45 Part 46 Code of Federal Regulations), the Department has prepared the final rule on research involving children as human subjects. A number of provisions of the proposed rule have been deleted since they are discussed and incorporated into the amended 45 CFR 46 Subpart A published in the **Federal Register** on January 26, 1981 (46 FR 8366). The summaries of the public comment and the Department's responses and final decisions are organized below by the section and paragraph designation of the proposed rule.

Section 46.401 To what do these regulations apply?

Public Comment: Several commentators stated that specific exemptions should be included in this subpart.

HHS Response: The Department agrees that exemptions (1), (2), (5) and (6), as listed in Subpart A at § 46.101(b) should be applicable to Subpart D as well, and has reworded the final rule to reflect this.

Exemption (3), research involving survey or interview procedures, as listed in § 46.101(b) of Subpart A is not made applicable to this subpart. The Department assumes that adults have the capability to determine whether or not to participate in survey or interview research. However, the Department believes that children being surveyed or interviewed by an investigator may not be capable of recognizing that their responses to questions on sensitive issues could be potentially damaging to themselves or others. Therefore, it is appropriate that the IRB at least review such research to determine whether the rights and welfare of children participating as subjects are adequately protected and when the requirements of permission or assent can be waived. Such waivers shall be in accordance with the requirements of §§ 46.116 and 46.117 of Subpart A.

Exemption (4), research involving the observation of public behavior, as listed in § 46.101(b) of Subpart A, is applicable to Subpart D where the investigator(s) does not participate in the activities being observed. The Department believes that children involved in observation research, where the investigator(s) is also participating in the activities being observed, may not have the capability to determine whether or not to participate and therefore IRB review of such research is appropriate. This modification is reflected in the final rule at § 46.101(b).

Reference is also made in this final rule to the exceptions, additions, and provisions listed in paragraphs (c) through (f) of § 46.101 of Subpart A.

In addition, two other provisions concerning applicability of other subparts of 45 CFR Part 46 or other laws or regulations that are included under § 46.101(a) are repeated in § 46.401(a).

Section 46.402 Purpose.

Public Comment: There was a single comment suggesting that this section be amended to include an explicit statement regarding the value of research involving children as stated in the recommendations of the National Commission.

HHS Response: This section was hortatory in nature and served no substantive purpose.

This section is deleted in the final rule and all subsequent sections are re-numbered.

Section 46.403 Definitions.

Public Comment: There were a total of 26 comments on the definitions. "Secretary," "DHEW" (now HHS), "Parent" and "Guardian" were not the subject of comment. There were three comments on "Research" and seven on "Minimal risk." Responses to these ten comments were considered in the preamble of Subpart A, previously published (46 FR 8366).

Three commentators criticized the Department's definition of "Children" for including those "persons who have not attained the legal age of consent to general medical care as determined under the applicable law of the jurisdiction in which the research will be conducted." They pointed out that in many jurisdictions certain classes of minors are considered to be emancipated and are legally authorized to consent to certain kinds of treatment or services.

There were eight comments on the definition of "Advocate," five of which objected to the provision that such an individual should not have "any financial interest in, or other association with, the institution conducting or sponsoring the research." A reason given was that it would be difficult, if not impossible, to get qualified volunteers to serve as advocates. Other commentators questioned the legal authority of an IRE to appoint an advocate and whether an advocate might be placed in legal jeopardy if an injury or suit resulted.

Five comments on "Assent" and "Permission" as definitions were received which did not call for a major change in these definitions. Additional comments on "Assent" and "Permission" in general are summarized in the discussion of § 46.409 below.

HHS Response: The definitions of "Parent" and "Guardian" are unchanged. The terms "Research" and "Minimal risk" are removed from this subpart since they appear in subpart A (§ 46.102 (e) and (g)). The Department agrees that reference to "consent to general medical care" in the definition of children is not appropriate and has, therefore, reworded the final regulation to read "consent to treatments or procedures involved in the research." The Department does not believe that a definition of "Advocate" is needed since it has been decided to delete any requirements for an advocate other than under Section 46.409 (a) and (b) of the final rule where the duties of the advocate serve as a working definition. It is the Department's position that the role of the advocate not be compromised by association with the research, the investigator(s), or the guardian organization. Modification of the final rule, at § 46.409 reflects this position, and is consistent with the recommendations of the National Commission.

In the definitions of "Assent" and "Permission" all references to informed consent requirements have been deleted since they are discussed in § 46.409 below.

This section is redesignated as § 46.402 in the final rule.

Section 46.404 IRB duties.

Public Comment: A total of 38 commentators addressed one or more of the duties assigned to IRBs by this support, in addition to those assigned in Subpart A. The majority of the comments referred to § 46.404(a)(1) "The research methods are appropriate to the aims of the research" or to § 46.404(a)(8), "adequate provisions are made for monitoring solicitation of assent and permission * * *."

Six commentators questioned the phrase "The competence of investigator(s) and the quality of the

research facility are sufficient for the conduct of the research."

Comments on §§46.404(a)(1) and 46.404(a)(2) were related and very similar to those objections received in connection with a similar provision in the Proposed Regulations Amending Basic HEW Policy for Protection of Human Research Subjects (44 FR 47688, August 14, 1979), which states that "The research methods are appropriate to the objective of the research and the field of study."

Commentators pointed out, in response to the National Commission's recommendation (7)(B) (43 FR 31789), that the Department evidently intended to have the phrase "when appropriate" precede the provision at § 46.404(a)(8) and, therefore, monitoring would be the IRB decision. Had the phrase "when appropriate" been included in the proposed regulation, most of the comments probably would not have been expressed, since objections concerned the requirement for monitoring solicitation of assent and permission for all projects.

HHS Response: On August 14, 1979, when the Department published Proposed Regulations Amending Basic HEW (now HHS) Policy for Protection of Human Research Subjects (44 FR 47688), the public comment period for soliciting responses to the proposed regulations for research involving children was also extended. In its preparation of final regulations concerning the basic policy (Subpart A of Part 46), the Department examined all comments relating to IRB duties. Therefore, the HHS believes that the comments concerning this section have been adequately addressed in the preamble and regulatory sections of the final regulations amending Subpart A, published on January 26, 1981 (46 FR 8366). Accordingly, provisions (1) through (9) of § 46.404(a) as well as § 46.404(b) and (c) have been deleted. Section 46.404(a) has been modified and redesignated as §46.403 in the final rule.

Although subject selection was not a point of significant public comment, the Department believes, as did the National Commission, that research involving risk should be conducted first on animals and adult humans in order to ascertain the degree of risk. When this is not relevant or possible, research should be first conducted on older children if feasible before progressing to younger children.

Section 46.405 Research not involving greater than minimal risk.

Public Comment: Only two commentators addressed this section, with one stating that to require explicit permission in all minimal risk, social and educational research would greatly and unnecessarily inhibit valuable research, especially in school settings. The other commentator felt that the phrase, "except where such provisions are waived by an IRB or its equivalent," should be added after the reference to § 46.409.

HHS Response: The Department has already taken account of the comment concerning research in schools since 45 CFR 46.101(b) exempts certain types of social and educational research which are also exempted from coverage under this subpart. In response to the second comment, §46.408 (formerly § 46.409) does provide for IRB waiver of the requirements for permission and assent under certain circumstances. Section 46.405(a), which referred to conditions of § 46.404, has been deleted.

This section, redesignated as § 46.404, reflects the above discussion in the final rule.

Section 46.406 Research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects.

Public Comment: Of the five commentators who directed their remarks to this section, one felt that if this were interpreted to mean that each subject should benefit, no placebo controlled drug study could be done. The other four comments pertained to § 46.406(b). One person felt that the provisions should incorporate language from the National Commission's report describing when a risk is acceptable. Another commentator questioned how the IRB could make the required judgment in the case of an Investigational New Drug (IND) study. A third person suggested that "is believed" be inserted before "at least as favorable." Another commentator suggested deleting the section since it lacks logic in view of the fact that a research program does not allow the estimates required by this section.

HHS Response: It is the Department's position that research activities involving placebos may be conducted in accord with Subpart D, depending upon the individual activity. An IRB may find that a particular activity is approvable under sections redesignated in the final rule as §§ 46.404, 46.405, and 46.406, or, in some cases, a combination of these sections.

The Department feels that in order to provide adequate safeguards for the protection of children as research subjects, the language of § 46.406 as proposed is not only essential but is in keeping with the recommendations of the National Commission. Therefore, except for deleting §46.406(c), the section is retained and redesignated as § 46.405 in the final rule.

Section 46.407 Research involving greater than minimal risk and no prospect of direct benefit to individual subjects, but likely to yield generalizable knowledge about the subject's disorder or condition.

Public Comment: There were a total of 12 commentators that referred to this section or to a related question posed in the proposed regulations on how the Department could provide more useful guidance to IRBs in evaluating when a "minor increment over minimal risk is involved."

Several commentators felt that no attempt should be made either to define the concept of "minor increment" or to provide guidance to IRBs on evaluating whether a minor increment over minimal risk is involved. These commentators believed that because of varying situations and circumstances, IRBs would have to make judgments on a case by case basis. Other commentators cited the present difficulty of dealing with the concept of minimal risk and objected to any additional category of risk if not specifically defined. A few commentators stated that attempts by IRBs and investigators to determine minor increment over minimal risk could be too frustrating and impractical.

Several commentators questioned whether IRBs would have the expertise to evaluate adequately whether the research is likely to yield generalizable knowledge about the subject's disorder or condition which is of vital importance for the understanding or amelioration of same.

HHS Response: The Department believes that it is an appropriate responsibility of the IRBs to determine when the research would involve a minor increase over minimal risk. The Department also believes that the IRBs either are qualified or will enlist the aid of consultants who are qualified to judge whether the generalizable knowledge yielded will be of vital importance for the understanding or amelioration of the subject's disorder or condition.

Except for the deletion of § 46.407(d) this section is retained and redesignated as § 46.406 in the final rule.

Section 46.408 Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of children.

Public Comment: There were a total of 11 comments, the majority of which spoke to § 46.408(b). Some commentators felt that properly

constituted IRBs serve the best interest of children and should review and approve all types of research proposals. Others preferred a standing Ethics Advisory Board and pointed out that employment of expert panels could lead to a kind of situational ethics. Four commentators, however, endorsed the change to a panel of experts instead of a National Ethics Advisory Board.

One respondent questioned the apparent escalation of the level of risk to which the Department is willing to expose research subjects. The commentator pointed out that minimal risk was once being suggested as an outer limit, but now research in children is authorized by the proposed regulations which cannot even meet the relaxed and "mystifying" standard of "minor increases over minimal risk." The same commentator suggested deleting this section in its entirety.

HHS Response: The National Commission made a recommendation that provided for exceptional situations in which the problem addressed would be a grave one, the expected benefit would be of major significance, the hypothesis regarding the expected benefit would be scientifically sound, and an equitable method would be used for selecting subjects. HHS intends that this section apply when the IRB has difficulty in applying §§ 46.405, 46.406 and 46.407 (now designated as §§ 46.404, 46.405 and 46.406 in the final rule) but considers the research of sufficient importance to warrant national review and determination by the Secretary, HHS, prior to its being conducted.

The Department believes not only that the section should be retained, but that a panel of experts, which could be an ethics advisory board or some other qualified body, offers a flexible mechanism for reaching decisions on these difficult questions. HHS further feels that consultation with the panel, in addition to IRB and peer review, with final determination being made by the Secretary, will assure appropriate protection of children as research subjects.

Reference to § 46.404 was deleted from § 46.406(a)(1) as in the previous three sections. Section 46.408 is redesignated as § 46.407 in the final rule.

Section 46.409 Requirements for permission by parents or guardians and for assent by children.

Public Comments: Thirty-nine commentators specifically addressed this section. There were an additional 48 comments directed to the Department's request for public response to options presented in the preamble to the proposed rule (43 FR 31786, July 21, 1978) which related to whether an age for assent should be stated and, if so, what age.

Fourteen commentators addressed the subject of soliciting assent of children. A few of these commentators felt that a child should be informed and voluntary participation assured, but that there should be no formal regulatory requirement for assent. Others stated that IRBs should not be given exact guidelines, because information provided to and assent obtained from the child should depend on a variety of factors, such as the type of research, the child's level of competence, and the potential risk and discomfort involved. Almost one half of the commentators suggested that the investigator, using appropriate criteria, should decide when to obtain assent from children on a case by case basis. A few commentators pointed out that there were no guidelines for determining what could be done in situations where subjects object to participation in the research. Some commentators were concerned that if an IRB had to make a judgment regarding the assent of each individual child in a project involving 200 children, the review task would be impossible.

In response to the first option presented by the Department concerning the age of assent, five commentators preferred requiring assent from children who are 12 years of age or older. Of these commentators, one believed that age seven or older would be more appropriate when the research involved drug testing. A number of commentators were of the opinion that children between the ages of seven and 12 be informed of the research although assent would not be required until age 12.

Five commentators preferred option (2) agreeing that it was reasonable to expect children at age seven and older to understand and actively participate in the decision-making concerning their involvement in the research.

Eleven commentators felt that option (3) was most appropriate. Under this option, the IRBs would decide when to require assent, but the preamble to the regulations would provide guidance to the IRBs concerning an appropriate age. Of these commentators, six favored guidance recommending age 12, three favored age seven and two did not express an opinion concerning age.

Sixteen commentators favored option (4), preferring that assent be left to the discretion of the IRB and that no guidance be provided either in the regulations or in the preamble. Many of these commentators felt that option (4) presented the most flexible approach to the determination of capability, since chronological age alone is an insufficient criterion. They also believed that the best protection for children would be the thoughtful consideration of what information would be given to subjects by a competent group of scientists and lay persons, together with the informed permission of parents.

There were seven comments on option (5), other alternatives, which dealt mostly with different suggested ages for assent varying from age three to 16.

There were five comments directed to the subject of advocate which was proposed under § 46.409(b). Three commentators endorsed this section requiring that the IRB determine when to employ an advocate. One commentator stated that it would be a mistake to establish a distinct and separate class of children for whom third party permission was required. Another commentator suggested that material should be provided concerning issues relevant to the role of an advocate who would have the delicate and challenging task of decision-making. A fifth commentator opposed an advocacy plan, stating that to require the IRBs to locate and monitor advocates would greatly increase the burden of the IRBs.

Seven commentators addressed provision § 46.409(c). One commentator felt that the concept of one parent being "not reasonably available" might need further clarification or definition. Another commentator believed that no research ought to be undertaken on children unless both parents, or a single parent if the child is under the care of only one parent, consent in accordance with the requirements of informed consent. Others suggested that a section should be provided allowing the IRB to establish criteria for activities not requiring parental permission such as levels of research that do not involve risk beyond that which is expected in day to day activities. A few commentators stated that parental permission should be waived for social and educational research.

Twelve commentators responded to § 46.409(d), five of whom agreed in principle that the section as drafted was appropriate and adequate. Other comments varied as follows: additional safeguards should be listed and the IRB should not be the body to grant permission; the IRBs should not be encouraged to treat categories of children, neglected, abused or whatever, as candidates for uniform waivers and such groups of children should not be research subjects unless the research offers them direct therapeutic gains; and, a phrase should be added to the parenthetical example in § 46.409(d) such as "children in educational settings

where no greater than minimal risk is involved."

There were no comments on § 46.409 (e) and (f).

HHS Response: The Department appreciates the public's response to its request for comments on the important issue of assent and after careful consideration of all the comments agrees that determination of an appropriate age for assent should be made by the IRB and that § 46.409(a) should be adopted with minor modification. The phrase "the child is so incapacitated" is changed to "the capability of some or all of the children is so limited." In addition, the last sentence referring to a subject advocate is deleted.

As discussed above under definitions, the Department does not believe that emphasis should be given to advocates, and, therefore, the appointment of an advocate should not be a provision of this section. Even in the absence of the child's assent, if the procedure holds out a prospect of direct benefit available only in the context of the research, permission of the child's parent(s) or guardian should be sufficent. Therefore all references to the use of an advocate are deleted from this section in the final rule.

The Department believes that the wording of the final regulations at § 46.408(b) (formerly § 46.409(c)) is such that the IRB will require the permission of both parents in all instances if they feel that it is appropriate and that the IRB should be given the responsibility for determining when a parent is not "reasonably available." A sentence has been inserted in this provision pointing out that in soliciting permission, the requirements for informed consent set forth in § 46.116 of Subpart A shall apply. With regard to assent, the criteria set forth in § 46.116 may be used by IRBs as a guide to determine what types of information should be provided to children when soliciting their assent.

The Department agrees with the public comment suggesting that assent and parental permission or documentation of such permission may not be appropriate in some cases. Accordingly, references to § 46.116 and § 46.117 of Subpart A are added to clarify that the IRB may approve waivers under certain circumstances.

The Department considers § 46.408(c) (formerly § 46.409(d)), to be adequate as drafted since it provides flexibility for the IRB to provide an appropriate mechanism for protecting certain subject populations.

Section 46.409 (e) and (f) have been reworded and the entire section has been redesignated as § 46.408 in the final rule.

Section 46.410 Wards.

Public Comments: A total of eight commentators addressed this section. Some suggested that the common legal element of § 46.410 be removed by changing the title from "Wards" to a more neutral title such as "children removed from parental custody and care." Several commentators interpreted the specified conditions as being too restrictive if "related to their status as wards" meant that research on such an individual's condition could not be undertaken. Another was of the opinion that the circumstances under which wards of the state might be involved need to be defined more narrowly to allow research only when it presents a reasonable opportunity to understand, prevent or alleviate a serious problem affecting the health or welfare of wards as a class and only when the information cannot be obtained from other segments of the population. One questioned the role of the advocate and felt that, due to the "coercive nature of their situation and lack of parental concern," involvement of wards in nontherapeutic research should be forbidden.

HHS Response: The Department would like to point out that this section is intended to apply strictly to "wards" and not also to children who, because of various physical or mental disabilities, may be under the custody and care of some other person or facility and whose parents are still legally responsible for them. The Department emphasizes that the provisions of this section are to be applied only if wards are to be included in research approved under §§ 46.406 or 46.407 of this part, as redesignated. Therefore, this section would not affect research presenting direct benefit to the individual subjects. The Department believes that these provisions would protect such children from being involved in research not intended to be of direct benefit and from being taken advantage of because of their status. The Department has deleted § 46.410(c) because § 46.410(b) adequately covers the role of an appointed advocate.

This section is redesignated as § 46.409 in the final rule.

List of Subjects in 45 CFR Part 46

Civil rights, Government contracts, Grant programs—health, Prisoners, Research, Safety, Women, Children, Human research subjects, Research.

Dated: September 23, 1982.

Edward N. Brandt, Jr.,

Assistant Secretary for Health.

Dated: February 3, 1983.

Richard S. Schweiker,

Secretary.

PART 46—[AMENDED]

Accordingly, Part 46 of 45 CFR is amended by adding a new Subpart D to read as follows:

Subpart D—Additional Protections for Children Involved as Subjects in Research

Sec.

46.401 To what do these regulations apply?
46.402 Definitions.
46.403 IRB duties.
46.404 Research not involving greater than minimal risk.
46.405 Research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects.
46.406 Research involving greater than minimal risk and no prospect of direct benefit to individual subjects, but likely to yield generalizable knowledge about the subject's disorder or condition.
46.407 Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of children.
46.408 Requirements for permission by parents or guardians and for assent by children.
46.409 Wards.

Subpart D—Additional Protections for Children Involved as Subjects in Research

§ 46.401 To what do these regulations apply?

(a) This subpart applies to all research involving children as subjects, conducted or supported by the Department of Health and Human Services.

(1) This includes research conducted by Department employees, except that each head of an Operating Division of the Department may adopt such nonsubstantive, procedural modifications as may be appropriate from an administrative standpoint.

(2) It also includes research conducted or supported by the Department of Health and Human Services outside the United States, but in appropriate circumstances, the Secretary may, under paragraph (e) of § 46.101 of Subpart A, waive the applicability of some or all of the requirements of these regulations for research of this type.

(b) Exemptions (1), (2), (5) and (6) as listed in Subpart A at § 46.101(b) are applicable to this subpart. Exemption (4), research involving the observation

of public behavior, listed at § 46.101(b), is applicable to this subpart where the investigator(s) does not participate in the activities being observed. Exemption (3), research involving survey or interview procedures, listed at § 46.101(b) does not apply to research covered by this subpart.

(c) The exceptions, additions, and provisions for waiver as they appear in paragraphs (c) through (i) of § 46.101 of Subpart A are applicable to this subpart.

§ 46.402 Definitions.

The definitions in § 46.102 of Subpart A shall be applicable to this subpart as well. In addition, as used in this subpart:

(a) "Children" are persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law of the jurisdiction in which the research will be conducted.

(b) "Assent" means a child's affirmative agreement to participate in research. Mere failure to object should not, absent affirmative agreement, be construed as assent.

(c) "Permission" means the agreement of parent(s) or guardian to the participation of their child or ward in research.

(d) "Parent" means a child's biological or adoptive parent.

(e) "Guardian" means an individual who is authorized under applicable State or local law to consent on behalf of a child to general medical care.

§ 46.403 IRB duties.

In addition to other responsibilities assigned to IRBs under this part, each IRB shall review research covered by this subpart and approve only research which satisfies the conditions of all applicable sections of this subpart.

§ 46.404 Research not involving greater than minimal risk.

HHS will conduct or fund research in which the IRB finds that no greater than minimal risk to children is presented, only if the IRB finds that adequate provisions are made for soliciting the assent of the children and the permission of their parents or guardians, as set forth in § 46.408.

§ 46.405 Research involving greater than minimal risk but presenting the prospect of direct benefit to the individual subjects.

HHS will conduct or fund research in which the IRB finds that more than minimal risk to children is presented by an intervention or procedure that holds out the prospect of direct benefit for the individual subject, or by a monitoring procedure that is likely to contribute to the subject's well-being, only if the IRB finds that:

(a) The risk is justified by the anticipated benefit to the subjects;

(b) The relation of the anticipated benefit to the risk is at least as favorable to the subjects as that presented by available alternative approaches; and

(c) Adequate provisions are made for soliciting the assent of the children and permission of their parents or guardians, as set forth in § 46.408.

§ 46.406 Research involving greater than minimal risk and no prospect of direct benefit to individual subjects, but likely to yield generalizable knowledge about the subject's disorder or condition.

HHS will conduct or fund research in which the IRB finds that more than minimal risk to children is presented by an intervention or procedure that does not hold out the prospect of direct benefit for the individual subject, or by a monitoring procedure which is not likely to contribute to the well-being of the subject, only if the IRB finds that:

(a) The risk represents a minor increase over minimal risk;

(b) The intervention or procedure presents experiences to subjects that are reasonably commensurate with those inherent in their actual or expected medical, dental, psychological, social, or educational situations;

(c) The intervention or procedure is likely to yield generalizable knowledge about the subjects' disorder or condition which is of vital importance for the understanding or amelioration of the subjects' disorder or condition; and

(d) Adequate provisions are made for soliciting assent of the children and permission of their parents or guardians, as set forth in § 46.408.

§ 46.407 Research not otherwise approvable which presents an opportunity to understand, prevent, or alleviate a serious problem affecting the health or welfare of children.

HHS will conduct or fund research that the IRB does not believe meets the requirements of §§ 46.404, 46.405, or 46.406 only if:

(a) The IRB finds that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; and

(b) The Secretary, after consultation with a panel of experts in pertinent disciplines (for example: science, medicine, education, ethics, law) and following opportunity for public review and comment, has determined either: (1) That the research in fact satisfies the conditions of §§ 46.404, 46.405, or 46.406, as applicable, or (2) the following:

(i) The research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children;

(ii) The research will be conducted in accordance with sound ethical principles;

(iii) Adequate provisions are made for soliciting the assent of children and the permission of their parents or guardians, as set forth in § 46.408.

§ 46.408 Requirements for permission by parents or guardians and for assent by children.

(a) In addition to the determinations required under other applicable sections of this subpart, the IRB shall determine that adequate provisions are made for soliciting the assent of the children, when in the judgment of the IRB the children are capable of providing assent. In determining whether children are capable of assenting, the IRB shall take into account the ages, maturity, and psychological state of the children involved. This judgment may be made for all children to be involved in research under a particular protocol, or for each child, as the IRB deems appropriate. If the IRB determines that the capability of some or all of the children is so limited that they cannot reasonably be consulted or that the intervention or procedure involved in the research holds out a prospect of direct benefit that is important to the health or well-being of the children and is available only in the context of the research, the assent of the children is not a necessary condition for proceeding with the research. Even where the IRB determines that the subjects are capable of assenting, the IRB may still waive the assent requirement under circumstances in which consent may be waived in accord with § 46.116 of Subpart A.

(b) In addition to the determinations required under other applicable sections of this subpart, the IRB shall determine, in accordance with and to the extent that consent is required by § 46.116 of Subpart A, that adequate provisions are made for soliciting the permission of each child's parents or guardian. Where parental permission is to be obtained, the IRB may find that the permission of one parent is sufficient for research to be conducted under § 46.404 or § 46.405. Where research is covered by §§ 46.406 and 46.407 and permission is to be obtained from parents, both parents must give their permission unless one parent is deceased, unknown, incompetent, or not reasonably available, or when only one parent has

legal responsibility for the care and custody of the child.

(c) In addition to the provisions for waiver contained in § 46.116 of subpart A, if the IRB determines that a research protocol is designed for conditions or for a subject population for which parental or guardian permission is not a reasonable requirement to protect the subjects (for example, neglected or abused children), it may waive the consent requirements in Subpart A of this part and paragraph (b) of this section, provided an appropriate mechanism for protecting the children who will participate as subjects in the research is substituted, and provided further that the waiver is not inconsistent with federal, state or local law. The choice of an appropriate mechanism would depend upon the nature and purpose of the activities described in the protocol, the risk and anticipated benefit to the research subjects, and their age, maturity, status, and condition.

(d) Permission by parents or guardians shall be documented in accordance with and to the extent required by § 46.117 of Subpart A.

(e) When the IRB determines that assent is required, it shall also determine whether and how assent must be documented.

§ 46.409 Wards.

(a) Children who are wards of the state or any other agency, institution, or entity can be included in research approved under § 46.406 or § 46.407 only if such research is:

(1) Related to their status as wards; or

(2) Conducted in schools, camps, hospitals, institutions, or similar settings in which the majority of children involved as subjects are not wards.

(b) If the research is approved under paragraph (a) of this section, the IRB shall require appointment of an advocate for each child who is a ward, in addition to any other individual acting on behalf of the child as guardian or in loco parentis. One individual may serve as advocate for more than one child. The advocate shall be an individual who has the background and experience to act in, and agrees to act in, the best interests of the child for the duration of the child's participation in the research and who is not associated in any way (except in the role as advocate or member of the IRB) with the research, the investigator(s), or the guardian organization.

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March 8, 1983

Part V

General Services Administration

Assignment and Utilization of Space; Temporary Regulations

GENERAL SERVICES ADMINISTRATION

41 CFR Ch. 101

[FPMR Temp. Reg. D-68]

Temporary Regulations; Assignment and Utilization of Space

AGENCY: Public Buildings Service, General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This regulation provides revised procedures concerning the assignment and utilization of space in Federal facilities under the custody and control of GSA. It supersedes provisions in 41 CFR Part 101-17. The intent of the rule is to simplify and streamline GSA's space management regulations.

DATES: Effective date March 8, 1983. Expiration date January 31, 1984, unless sooner revised or superseded.

Comments due by: Comments may be submitted at any time; to ensure their consideration in drafting the final regulation, comments should be received by GSA no later than June 30, 1983.

ADDRESS: Comments should be submitted to the General Services Administration (PR), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Arthur O. Barton, Acting Assistant Commissioner for Space Management (202-566-1025).

SUPPLEMENTARY INFORMATION: GSA's authority for issuing this temporary regulation is contained in the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 486(c)).

The purpose of this regulation is to substantially improve the cost effectiveness of agencies' use of space and to simplify the process through which agencies acquire and dispose of space controlled by the General Services Administration. It reflects the President's announced goal to strengthen the management and improve the efficiency of the Federal Government. By improving the utilization of Government space, substantial cost savings may be achieved. Further, this regulation vests responsibility for improved controls with the top management of executive branch agencies with the goal of reducing Federal space to the absolute minimum necessary for employees to accomplish the tasks they must perform.

Prior Comments

In October 1982, GSA established an interagency advisory committee to redraft the Federal Property Management Regulations, 41 CFR Chapter 101. This regulation reflects comments and changes recommended by members of that committee. Further, GSA distributed working copies of this temporary regulation to the Assistant Secretaries for Management of Federal agencies in November 1982 and on January 4, 1983. In addition, guidance was received from the Executive Office of the President and key policy forums in December and again in early March.

One of major issues raised by commenters was whether the provisions of the new regulation would be retroactive with regard to space actions currently in process. GSA agrees that the provisions of the temporary regulation should not be applied, *in toto*, to pending space requests. However, the requirement to improve utilization and move towards the objective of 135 square feet per person is, for all space actions, effective immediately. Thus, reevaluation of certain pending requests submitted prior to the effective date of the regulation is appropriate.

Questions were also raised as to the process by which GSA will fulfill space requests during the interim period between the effective date of the regulation and the approval of agency space plans. Until plans are developed and approved, GSA will process requests as if each request were not contained in an approved plan. Therefore, all space requests submitted in the absence of a plan must be signed by the head of the agency or by his or her formally designated representative. This procedure is set forth in § 101-17.101(c) of the regulation.

A related concern was whether existing agency space allocation standards previously approved by GSA would remain in force. GSA agrees that existing standards will continue to apply until changed by the agencies. It should again be noted that this does not relieve an agency head of the responsibility to attempt to achieve an overall office utilization rate of 135 square feet as soon as possible. Rather, it requires agency heads to expeditiously review and modify existing space allocation standards.

Several commenters suggested improvements in the definitions of office space and utilization rates contained in the regulation. While agreeing that some points are well taken, GSA's position is that there should be no changes in the present methods by which GSA-controlled space is measured and categorized. During the course of the drafting process, GSA and the members of the advisory committee considered various modifications of the definitions. It was clear that departures from the existing criteria were likely to impose substantial additional workloads, would engender confusion among agencies, and would severely limit the utility of the existing "base line" data against which future progress must be evaluated.

Some concerns were expressed regarding procedures for the development of agency space plans. In response, GSA has instituted meetings with agencies and with regional GSA personnel to disseminate planning data, discuss the planning process, and provide guidance for the development of the plans.

A number of comments objecting to proposed procedures for relinquishment of space were received. Commenters suggested that the concept of making agencies responsible and accountable for space which could no longer be readily used did not adequately reflect the fact that changes to agency programs may change space needs. It is GSA's position that costs of changing space needs are direct results of decisions to change programs; as such, they should be identified with the programs. The provisions of § 101-17.203 of the regulation, pertaining to the responsibility for moving expenses, were interpreted by some commenters as representing a change in policy. It was not GSA's intent to effect policy changes in this area, and GSA has subsequently modified the language in several places for clarification.

One respondent observed that GSA regional personnel had been inconsistent in their initial application of the principles set forth in the regulation. GSA acknowledges that some uncertainty regarding implementation of new management concepts has occurred. When any broad initiative is undertaken, a certain amount of "slippage" is inevitable. GSA continues to monitor the space acquisition process in all regions in order to ensure as smooth a transition as possible.

GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has

chosen the alternative approach involving the least net cost to society.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter D to read as follows:

Federal Property Management Regulations; Temporary Regulation D–68

February 17, 1983.

To: Heads of Federal agencies

Subject: Assignment and utilization of space

1. *Purpose.* This regulation supersedes the material in 41 CFR Part 101–17 and provides revised instructions for assigning and using space.

2. *Effective date.* This regulation is effective March 8, 1983.

3. *Expiration date.* This regulation expires on January 31, 1984.

4. *Background.* The General Services Administration has started a program to streamline and simplify the Federal Property Management Regulations. GSA's Interagency Advisory Committee on Regulatory Review is assisting in this effort, and the material in this regulation was developed with the assistance on the Committee.

5. *Revised procedures.* Attachment A contains revised regulations concerning assignment and utilization of space.

6. *Comments.* Comments concerning the effect or impact of this regulation may be submitted to the General Services Administration (PR), Washington, DC 20405.

7. *Effect on other directives.* The provisions of Part 101–17 are superseded by the regulations in attachment A.

Gerald P. Carmen,

Administrator of General Services.

Section 101–17.000 Scope of Part

This part prescribes the policies and procedures for the assignment, utilization, and planning of space in buildings under the custody or control of GSA. The term "United States," as used in this subchapter, means the 50 States of the United States; the District of Columbia; and the Commonwealths, territories, and possessions of the United States

Section 101–17.001 Authority

This part implements the applicable provisions of the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended; the Act of July 1, 1898 (40 U.S.C. 285); the Act of August 27, 1935 (40 U.S.C. 304c); the Public Buildings Act of 1959, as amended (40 U.S.C. 601 et seq.); the Rural Development Act of 1972 (86 Stat. 674); Reorganization Plan No. 18 of 1950 (40 U.S.C. 490 note); the Public Buildings Cooperative Use Act of 1976 (90 Stat. 2505); Executive Order 12072 of August 16, 1978 (43 FR 36869); the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4201–4244); the Federal Urban Land-Use Act (40 U.S.C. 531–535); Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601); and the National Environmental Policy Act of 1969, as amended.

Section 101–17.002 Basic Policy

(a) GSA and other Federal agencies shall take all reasonable measures to assure the use of the absolute minimum space required to perform agency missions. For office space, the objective shall be to achieve an overall utilization rate of 135 square feet or less per person in a reasonable period of time. To accomplish this, each agency shall devise and implement a plan to improve the utilization of all space and shall indicate specific accomplishments to be realized within each year. GSA shall issue guidance and/or establish targets from time to time to assist agencies in improving space utilization. GSA and other Federal agencies shall work towards the most cost-effective solution practicable in each circumstance.

(b) Space in office buildings and other facilities required by Federal agencies shall be requested only when it is clearly demonstrated that additional space is essential to agency operations.

(c) Each agency shall determine the appropriate geographical area for its facilities. The agency shall define the broadest possible area compatible with its mission and functional requirements to ensure maximum utilization of Government-controlled space and to provide maximum potential for competitive offers of space. Agencies shall comply with all applicable statutes and Executive orders, including those cited in § 101–17.001. Plans for meeting space needs shall consider a social, economic environmental and cultural effects upon communities, and shall support local development and revitalization objectives wherever feasible.

(d) GSA will assign and reassign suitable space to Federal agencies and certain non-Federal organizations, and will issue criteria for the use of this space. To accomplish this, GSA will acquire and use federally owned and leased office buildings and space located in the United States. GSA will ascertain that agency-established geographical areas are sufficiently broad to ensure adequate consideration of available Government-owned space and adequate potential for competitive offers from the marketplace. GSA will then determine the appropriate delineated area for space assignments within established geographical areas.

(e) GSA will ensure that agencies use vacant available Government-controlled space which meets minimum agency requirements prior to acquiring new space. Whenever possible, agencies shall occupy this space without alteration. When alterations are required, alterations which are essential for performance of agency missions or which improve the utilization rate shall be given priority. Alterations solely for decorative or non-essential purposes shall be avoided.

(f) GSA may delegate authority to agencies to acquire and use federally owned or leased buildings; GSA will exercise oversight responsibility for agency actions under these delegations.

(g) GSA may require agencies to relinquish all or a portion of assigned space if this action is in the best interests of the Government and would not unreasonably interfere with the agency's performance of its mission. Under such forced relocations (as defined in § 101–17.003–6), GSA will be responsible for all expenses enumerated in § 101–17.203, and for moving and alteration expenses. GSA's responsibility for these expenses will commence at the time space is relinquished.

Section 101–17.003 Definition of Terms

The following definitions are established for terms used in this Subchapter D.

Section 101–17.003–1 Acceptance of Space

"Acceptance of space" means an authorization by an agency for GSA to award a lease, to make a commitment for initial alterations, and/or to establish a date of occupancy.

Section 101–17.003–2 Average Utilization Rate by Agency

"Average utilization rate by agency" means the utilization rate for a particular agency, calculated on a nationwide basis.

Section 101–17.003–3 Cost-Effective

"Cost-effective" means justified under an economic analysis which evaluates alternatives in terms of time-adjusted expenses incurred by the Government. GSA will publish bulletins specifying acceptable methods of analysis for evaluating space actions.

Section 101–17.003–4 Delineated Area

"Delineated area" means the specific boundaries, as determined by GSA, within which space will be obtained to satisfy an agency space requirement. It is based upon the agency's geographic service area, the amount of available Government-owned space, and the potential for competitive offers from the marketplace.

Section 101–17.003–5 Federal Agency

"Federal agency" means any executive agency or any establishment in the legislative or judicial branch of the Government execpt the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction.

Section 101–17.003–6 Forced Relocation

A "forced relocation" is any GSA-directed action, not initiated by agency request, that forces an agency to move from its present space assignment in whole or in part. Relocations included in "approved agency space plans" or resulting from the expiration of the term stated by the agency in the applicable SF–81, Request For Space, are not "forced relocations."

Section 101–17.003–7 General Purpose Space

"General purpose space" means space which is determined by GSA to be suitable for the use of agencies generally. General purpose space is categorized as office, storage, or special type. The physical characteristics of the space are the basis for determining the proper space category.

Section 101–17.003–8 Initial Space Layout

"Initial space layout" means the specific placement of work stations, furniture, and equipment for new space assignments. These initial services are provided by GSA at no cost to the agencies upon agency request.

Section 101–17.003–9 Joint-Use Space

"Joint-use space" means common space, such as cafeterias, conference rooms, credit unions, and snack bars, available for use by all occupants of the building. It does not include mechanical, custodial, or circulation areas.

Section 101–17.003–10 Non-Federal Organizations

"Non-Federal organizations" means organizations such as credit unions, concessions, and vending stands operated by the blind, and organizations under the direct sponsorship of a Federal agency such as grantees and contractors.

Section 101–17.003–11 Occupiable Area

"Occupiable area" means that portion of the gross area which is available for use by an occupant's personnel or furnishings, including space which is available jointly to the various occupants of the buildings, such as auditoriums, health units, and snack bars. Occupiable area does not include space in the building which is devoted to its operations and maintenance, including craft shops, gear rooms, and building supply storage and issue rooms. Nonpermanent ceiling-high corridors solely serving a single space assignment are occupiable. Occupiable area is computed by measuring from the occupant's side of ceiling-high corridor partitions or partitions enclosing mechanical, toilet, and/or custodial space to the inside finish of permanent exterior building walls or to the face of the convector if the convector occupies at least 50 percent of the length of the exterior wall. When computing occupiable area separated by partitions, measurements are taken from the center line of the partitions.

Section 101–17.003–12 Personnel

"Personnel," for purposes of computing utilization rates, means the peak number of persons to be housed in a given space assignment for which a work station must be provided. In addition to permanent Federal personnel, this may include temporaries, part time, seasonal, and contractual employees that cannot share existing workstations, as well as budgeted vacancies.

Section 101–17.003–13 Request for Space

"Request for space" ("space request") means a written document upon which an agency provides GSA with the information necessary to assign space. A request for space shall be submitted in a format designated by GSA. It shall at a minimum contain descriptions of amount of space, personnel to be housed, geographic area, and time period required.

Section 101–17.003–14 Space

"Space" means space in buildings, and land incidental to the use thereof, which is under the custody and control of GSA or for which a permit for use has been issued to GSA by another agency. It includes space acquired by other agencies under delegations of authority from GSA.

Section 101–17.003–15 Space Allocation Standards

"Space allocation standards" means agreements between GSA and an agency that are written upon the conclusion of a cooperative planning effort and are used:

(a) As a basis for establishing agency space requirements, and

(b) To document authorized variations from FPMR space utilization goals which result from specialized agency functional requirements or from particular characteristics of Government buildings.

Section 101–17.003–16 Space Assignment

"Space assignment" means an administrative action which authorizes the occupancy and use of space by a Federal agency or other eligible entity.

(a) "Office space" means space that provides an acceptable environment suitable in its present state for an office operation. This requirement includes, but is not limited to, adequate heating, ventilation, air-conditioning, floor covering, finished walls, and accessibility. The space may consist of a large open area or may be partitioned into rooms. Private corridors, closets, and similar areas which have been created within office space through the erection of partitions shall be classified as office space. Office space is further defined in Subpart 101–17.47.

(b) "Storage space" means space generally consisting of concrete, woodblock, or unfinished floors; bare block or brick interior walls; unfinished ceilings; and similar construction containing minimal lighting and heating. This type of space includes attics, basements, warehouses, sheds, unimproved areas of loft buildings, and unimproved building cores. All storage space will be classified under the subsets of general storage area, inside parking area, or warehouse areas. These categories are further defined in Subpart 101–17.47.

(c) "Special space" means space which has unique architectural features, requires the installation of special equipment, or necessitates the expenditure of varying sums to construct, maintain, and/or operate as compared to office and storage space. Special space is further defined in Subpart 101–17.47.

Section 101–17.003–17 Space Inspection

"Space inspection" means a reconnaissance-type evaluation of the manner in which assignments are being utilized to determine whether immediate

or scheduled corrective action is warranted.

Section 101–17.003–18 Space Planning

"Space planning" means the process of using recognized professional techniques to determine the best location and the most efficient configuration for agency facilities.

Section 101–17.003–19 Space Utilization Survey

"Space utilization survey" means a detailed analysis, using recognized space management procedures and techniques, of the manner in which an agency is utilizing its space.

Section 101–17.003–20 Special Purpose Space

"Special purpose space" means space which is designed for unusual functions of an agency and is determined by GSA to be generally unsuitable for the use of other agencies. Special purpose space is further defined in Part 101–18.

Section 101–17.003–21 Unique Agency Space

"Unique agency space" means space which is classified as special purpose space, which contains a substantial amount of special purpose space, or which is located where use by other agencies is impractical.

Section 101–17.003–22 Utilization Rate

"Utilization rate" is an indicator of the efficiency with which space is used. It is developed by dividing the total square footage of that portion of occupiable area (excluding joint-use space) which is defined as office space assigned to an agency by the total number of personnel occupying that space.

Subpart 101–17.1—Assignment of Space

Section 101–17.101 Requests for Space

(a) Federal agencies shall express their space needs by submitting a Standard Form 81, Request for Space, to the GSA regional office responsible for the geographic area in which the space is required. GSA may also require the submission of Standard Form 81–A Space Requirements Worksheet, in appropriate circumstances. A listing of GSA regional offices and the areas they service is shown in Subpart 101–17.4801.

(b) When appropriate, GSA will advise agencies to submit Requests for Space in buildings to be constructed on GSA Form 144, Net Space Requirements for Future Federal Buildings Construction. GSA will also advise agencies when space requested is classified as unique agency space.

(c) Space requests shall be in accordance with the requirements of the agency space plan. (See Subpart 101–17.303.) Space requests not in conformity with the agency space plan shall contain a statement describing the nature and effect of all modifications to the plan, and they shall be signed by the head of the agency.

(d) The need for space requested, the number of personnel housed, and the availability of funds for reimbursement to GSA shall be certified by an authorized official of the requesting agency on the Standard Form 81.

(e) Space requests for the U.S. Postal Service will be processed in accordance with the U.S. Postal Service—GSA Agreement.

(f) GSA will not process any request for space if the request does not reflect a judicious and austere use of Government funds and resources.

Section 101–17.102 Delegations of Authority

(a) GSA may delegate authority to acquire space by lease or to procure parking accommodations when, in GSA's sole opinion, the delegation is in the best interests of the requesting agency and the Government. GSA will specify the terms and conditions of any delegation in writing at the time the delegation is made.

(b) Agencies acting under delegations shall make every reasonable effort to utilize existing Government-controlled facilities prior to acquiring new space. Agencies shall make inquiries regarding the availability of existing space to GSA regional offices, and shall document their lease files if alternative space is not available. Such documentation shall include the date of contact and the name and position of the GSA individual contacted.

(c) Agencies acting under delegations from GSA are required to comply with all other relevant sections of this Part 101–17.

Section 101–17.103 Action When Existing Space Is Not Available

If no suitable Government-controlled space is available, GSA will so advise the requesting agency by the return of a signed copy of the Standard Form 81, showing thereon the action to be taken.

(a) When the agency has acquisition authority or has been delegated such authority by GSA, it may proceed to acquire the requested space. The signed copy of the Standard Form 81, if required, shall be attached to the leasing or related instrument made available to the General Accounting Office.

(b) GSA may take necessary action to acquire space for agencies having acquisition authority when the latter so request by checking the appropriate block on Standard Form 81.

(c) GSA will take the necessary action to acquire the space for agencies having no acquisition authority.

Section 101–17.104 Space for Short-Term Use

Agencies having a need for facilities for short-term use (such as conferences and meetings, judicial proceedings, and emergency situations) shall make every reasonable effort to utilize Government-owned or leased facilities. If no suitable Government-controlled facilities are available, an agency may arrange for the use of privately owned facilities for a period not to exceed 120 days, provided that the agency has authority to contract for such facilities. Agencies shall make inquiries regarding space availability to GSA regional offices documenting such inquiries as outlined in Section 101–17.102(b).

Section 101–17.105 Space Requirements for ADP Equipment

Agencies requiring space for the installation of data processing equipment shall provide information as set forth in Subpart 101–17.47. This information must be forwarded to GSA as far as possible in advance of equipment delivery so that space can be provided in a timely and efficient manner.

Section 101–17.106 Location of Space

(a) Federal use of space shall encourage growth and economic development and redevelopment in rural areas, consistent with the provisions of section 601(b) of the Rural Development Act of 1972 (86 Stat. 674).

(b) In locating facilities, after due consideration of the provisions of the Rural Development Act, agencies shall give preference to the centralized business area and adjacent areas of similar character in the central city of Standard Metropolitan Statistical Areas (SMSA's) as defined by the Department of Commerce. In addition, GSA may consider other specific areas of a city recommend by the elected chief executive officer of the local government or a designee, except where this type of consideration is otherwise prohibited. GSA will advise local officials of the availability of data on GSA plans and programs, and will agree upon the exchange of planning information with local officials.

(c) The presence of the Federal Government in the National Capital Region is such that the distribution of Federal installations will continue to be a major influence in the extent and

character of development. Consequently, these policies shall be applied in the National Capital Region, on the most cost-effective basis feasible, in conjunction with regional policies established by the National Capital Planning Commission and consistent with the general purposes of the National Capital Planning Act of 1952 (66 Stat. 781) as amended.

(d) Consistent with the policies cited in paragraphs (a), (b), and (c) of this section, alternative sources for meeting Federal space needs will consider the use of buildings of historic, architectural, or cultural significance within the meaning of section 105 of the Public Buildings Cooperative Use Act of 1976 (90 Stat. 2507).

Section 101–17.107 Application of Socio-Economic Considerations

Whenever actions are proposed to accomplish the reassignment or utilization of space through the relocation of an existing major work force, the impact on low- and moderate-income and minority employees shall be considered. Under these circumstances, the Department of Housing and Urban Development shall be consulted by the requesting agency in accordance with the memorandum of understanding between the Department of Housing and Urban Development and the General Services Administration.

Section 101–17.108 Reviews and Appeals of Space Assignment Actions

Section 101–17.108 Formal Review

A request for a formal review of a space assignment or space acquisition action shall initially be submitted to the appropriate GSA regional office by the agency official authorized to sign the Standard Form 81, Request for Space. A request for a formal review shall be in writing and shall include all pertinent information and supporting documentation. The GSA regional offices will verify the data and perform additional investigation as necessary. The Regional Director, Real Estate Division, will review all data and make a written determination within 30 calendar days after receipt of the request. A copy of the decision will be sent to the requesting agency.

Section 101–17.108–2 Initial Appeal

(a) Within 15 calendar days after receipt of the decision, the regional agency head (or his designee) may submit an appeal of the decision to the Regional Administrator, GSA. In the appeal the agency official shall state, in writing, the basis for the original request for formal review. Only information provided with that request will be considered. Any new or additional information or facts introduced at this level will require that the appeal undergo another formal review.

(b) Within 15 calendar days the Regional Administrator, GSA, will notify the agency of his or her decision. In cases requiring more detailed analysis than can be accomplished within 15 days, the Regional Administrator will notify the agency and establish a date on which his or her decision will be rendered.

Section 101–17.108–3 Further Appeals

Within 15 calendar days after the agency has been notified of the Regional Administrator's decision, a further appeal may be filed by the agency head with the Administrator of General Services. The Administrator will render the agency's decision within 15 calendar days of receipt of the appeal whenever possible; if additional time is required, the Administrator shall notify the agency of the date a decision will be made.

Subpart 101–17.2—Utilization of Space

Section 101–17.201 Responsibility of GSA

GSA will conduct space inspections and space utilization surveys to promote and ensure efficient utilization, recapturing for release or reassignment any space which the agencies do not justify to the satisfaction of GSA as being required. The agency will be provided with a written summary of significant findings and recommendations, together with data concerning improvements which can be effected by the agency, and those which are planned by GSA.

Section 101–17.202 Responsibility of Agencies

Agencies shall cooperate with GSA in the assignment and utilization of space. Agencies shall:

(a) Furnish information regarding the use of assigned space;

(b) Furnish data on personnel consistent with budget submissions to the Office of Management and Budget and with existing appropriations;

(c) Continuously study and survey space occupied to ensure efficient and economical utilization of office space consistent with the minimum amount required to perform the agency mission; and

(d) Promptly report to GSA any space which is excess to their needs for assignment to other agencies.

Section 101–17.203 Procedures for Agency-Initiated Relinquishment of Space

(a) An agency occupying GSA-assigned space shall notify the appropriate GSA regional office as soon as possible, but at least 120 calendar days before vacating, whenever space is no longer needed. Notification shall be in writing, giving a description of the space and the estimated date of release.

(b) When a portion of space is relinquished, that space shall be consolidated, accessible, and readily assignable or marketable. Expenses required to make relinquished space consolidated, accessible, and readily assignable or marketable shall be borne by the agency, unless otherwise agreed to by the Administrator of GSA.

(c) The agency shall be responsible for Standard Level User Charge (SLUC) until the date of release specified in the notification, or until the date space is actually vacated, whichever occurs later. When an agency has not made timely notification to GSA, that agency shall be responsible for SLUC for a period of 120 calendar days following the date of notification or until the space has been reassigned, whichever occurs first.

(d) When the space relinquished is unique agency space, the agency shall also be responsible for out-of-pocket expenses for a period after 120 days following notification. This responsibility shall continue until:

(i) The space is assigned or otherwise disposed of by GSA, or

(ii) The expiration of the term specified on the most recent Request for Space applicable to the area in question, or

(iii) Notification by the Office of Management and Budget that agency responsibility for the space is no longer required, whichever occurs earliest.

(e) Agencies accepting space which is never occupied are similary responsible for all out-of-pocket expenses whenever the space in question is unique agency space.

(f) When an agency is responsible for the operation, maintenance, and protection of Government-owned space assigned by GSA, and the agency determines that this space is no longer needed, the agency shall so notify GSA at least 6 months prior to relinquishing the space. The operation, maintenance, and protection of the space shall continue to be the responsibility of the agency until the beginning of the next fiscal quarter following the end of the 6-month period.

Subpart 101-17.3—Space Standards and plans

Section 101-17.301 Space Allocation Standards

Space allocation standards are derived from specific studies of agency operations or facilities, and are directed toward providing each employee with the minimum amount of space to work efficiently. Where applicable, space allocation standards are to be used in space planning and assignment for agencies or components thereof. Standards shall be authorized and agreed to by GSA, and shall be developed to achieve the minimum practical cost-effective office space utilization rate. In each circumstance, the study should attempt to achieve a utilization rate of 135 square feet or less, if possible.

Section 101-17.302 Space Planning and Layout.

(a) Upon agency request, GSA will be responsible for preparing the initial space layout. When an agency requires subsequent layout assistance from GSA, a request for assistance shall be made to the appropriate GSA regional office. GSA will consult with the agency, will determine the scope of assistance required, and provide assistance on a reimbursable basis either by existing staff or by contract.

(b) No Federal agency shall contract for interior office design or space layout without first consulting with GSA. Upon agency request, GSA will enter into the contract and supervise performance. GSA may require agencies to use existing GSA space planning contracts or new contracts negotiated by GSA if this action is necessary to meet contractual commitments, to eliminate duplicative work, or to ensure cost-effectiveness in planning. GSA will also ensure that proposed design changes have no adverse effect upon mechanical systems, electrical systems, and safety requirements. However, GSA will not unreasonably insist upon the use of GSA-supervised contracts by agencies which have their own contracting authorities.

Section 101-17.303 Submission of Space Plans

(a) Each agency shall submit a space plan to GSA containing projected space requirements throughout the United States. GSA will provide technical assistance in the development and execution of plans, and will monitor the progress of the agencies in improving space management.

(b) At a minimum, each plan shall contain a forecast of agency personnel, and shall relate requirements to space presently occupied or under request by the agency. Agency plans shall also indicate utilization rates for all projected space assignments, shall detail agency efforts to improve space utilization, and shall include specific goals to be achieved.

(c) Each agency shall update its space plan annually. The plan shall in each instance be signed by the agency head.

(d) GSA will review and approve agency targets and plans, specifically considering the availability of Government-owned space, the timing of commitments for Government-controlled leased space, the cost-effectiveness of relocations and alterations, the adaptability of existing space to efficient layout, the operating requirements of the agency, and any space allocation standards which are applicable.

(e) GSA will publish bulletins specifying the timing, format, process, and data for review of each agency space plan. GSA may establish targets from time to time for agencies to assist in improving space utilization. For the initial space plan, the target for office space utilization shall be to achieve by September 30, 1984, 135 square feet per person or a minimum improvement of 10 percent in each agency's utilization rate compared with the utilization rate which exists as of the date of issuance of this regulation. This utilization improvement should be accomplished with *minimum space alterations* and within existing agency resource constraints.

(f) This report has been cleared in accordance with FPMR 101.11 and assigned interagency report control number 0307-GSA-AN.

Subpart 101-17.47—Exhibits

Section 101-17.4701 Supplemental Definitions.

This section contains information to supplement the definitions of office, storage, and special space in § 101-17.003-16.

(a) The following are representative of uses of office space.

(1) General purpose office space.

(2) Private corridors.

(3) Conference rooms (without special equipment and additional heating, ventilation, and air-conditioning (HVAC).

(4) Training rooms (without special equipment and HVAC).

(5) Libraries (with extensive built-in stacks and special floor loading).

(6) Dry laboratories.

(7) Storage in office space.

(8) Credit unions (without fixed equipment).

(9) Lounges (other than toilet areas).

(10) Reception areas.

(11) Hearing rooms (without special equipment and HVAC).

(12) Telephone switchboard rooms.

(13) Mail rooms.

(14) Health rooms (without special equipment).

(b) All storage space will be classified under subsets of general storage area, inside parking area, or warehouse areas, as follows:

(1) General storage areas (storage in general purpose buildings) including:

(i) Basements.

(ii) Attics.

(iii) Closets (not finished to office standards).

(iv) Supply rooms (not finished to office standards).

(v) Storerooms (not finished to office standards).

(vi) File rooms (not finished to office standards).

(vii) Warehouse areas of multiuse buildings.

(2) Inside parking areas (garage space located in either a federally owned or leased building which is utilized for the parking of motor vehicles) including:

(i) Garages.

(ii) Parking area.

(iii) Motor pool parking.

(3) Warehouse areas (entire buildings with warehouse features, including minor amounts of supporting office space).

(c) Special space is further defined as follows:

(1) Laboratory and clinic areas (space containing built-in equipment and utilities required for the qualitative or quantitative analysis of matter, experimentation, the processing of materials, and/or the physical welfare of employees or the public) including:

(i) Wet laboratories.

(ii) Clean laboratories.

(iii) Photographic laboratories.

(iv) Clinics.

(v) Health units and rooms (with special equipment).

(vi) Private toilets.

(2) Food service areas (space in building devoted to the preparation and dispensing of foodstuffs) including:

(i) Cafeterias (kitchen and table areas).

(ii) Snack bars.

(iii) Mechanical vending areas.

(iv) Private kitchens.

(3) Structurally changed areas (areas having architectural features differing form normal office or storage areas, such as sloped floors, high ceilings, and increased floor loading) including:

(i) Auditoriums.

(ii) Gymnasiums.

(iii) Libraries (with special stacks and floor loading).
(iv) Target ranges.
(v) Security vaults.
(vi) Courtrooms.
(vii) U.S. Postal Service workrooms.
(4) Automatic data processing areas (areas having special features such as humidity and temperature control, raised flooring, and special wiring) including:
(i) Computer rooms.
(ii) Support areas (with special flooring and wiring).
(iii) Tape vaults.
(5) Conference and training areas (areas used for conferences, training, and hearings with special equipment and supplemental HVAC) including:
(i) Conference rooms.
(ii) Hearing rooms.
(iii) Training rooms.
(iv) Exhibit areas.
(v) Small courtrooms (no structural changes).
(6) Light industrial areas including:
(i) Records storage (with humidity control).
(ii) Storage type space (with air-conditioning).
(iii) Printing plants.
(iv) Product classifying laboratories.
(v) Motor Pool service areas.
(vi) Postal workrooms, swingrooms, locker rooms, mailing vestibules and platforms, and lock box lobbies.
(vii) Shops (other than PBS).
(viii) Loading docks and shipping platforms.
(ix) Canopy areas.
(x) Vertical improved mail system areas.
(7) Quarters and residential housing areas (housing and quarters that do not logically fall in the other categories).

Section 101–47–4702 Space for Data Processing Equipment

This section sets forth the information required on space requests for data processing equipment.

(a) Agencies requiring space for the installation of data processing equipment must provide the following information in addition to the requirements of § 101–17.101–1:

(1) Type of equipment (including make, model number, manufacturer, and number of units of each);
(2) Space and environmental requirements, including:
(i) Floor weight (lbs.);
(ii) Machine dimensions (width, depth, and height in inches);
(iii) Service clearance (front, rear, right and left sides);
(iv) Power in voltage and kv.-a. (starting loads and operating loads);
(v) Heat dissipation in B.t.u./hr. and air flow (c.f.m.);
(vi) Environmental factors of temperature range (F) and relative humidity; and
(vii) Need for raised floor, acoustic ceiling, and air-conditioning;
(3) Related requirements, such as storage space for supplies, tapes, and disks, work space, including desk and aisle, space; and future expansion needs;
(4) Agency responsibility for funding; and
(5) Required occupancy date.
(b) The above information should be provided as separate supplemental data to Standard Form 81, Request for Space, and forwarded to the GSA office. The space requirements indicated on Standard Form 81 must include the space requirements for all components of ADPE. The ADPE suppier should be consulted prior to establishing space needs in order to ascertain any specific or peculiar space requirements of the ADPE involved.
(c) It is essential that this information regarding the requirement for ADP space be transmitted to GSA as far as possible in advance of delivery of equipment so that space can be provided in a timely and economical manner.

Subpart 101–17.48—GSA Regional Offices

Section 101–17.4801 GSA Regional Offices

GSA Region	Area served	Mailing address
1	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.	General Services Administration, John W. McCormack Post Office and Courthouse, Boston, MA 02109.
2	New Jersey, New York, Puerto Rico, and the Virgin Islands.	General Services Administration, 26 Federal Plaza, New York, NY 10007.
3	Delaware, Maryland (except metropolitan Washington, DC), Pennsylvania, Virginia (except metropolitan Washington, DC), and West Virginia.	General Services Administration, 9th and Market Streets, Philadelphia, PA 19107.
4	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.	General Services Administration, 1776 Peachtree Street, N.W., Atlanta, GA 30309.
5	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.	General Services Administration, 219 South Dearborn Street, Chicago, IL 60604.
6	Iowa, Kansas, Missouri, and Nebraska	General Services Administration, 1500 East Bannister Road, Kansas City, MO 64131.
7	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.	General Services Administration, 819 Taylor Street, Fort Worth, TX 76102.
8	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.	General Services Administration, Building 41, Denver Federal Center, Denver, CO 80225.
9	Arizona, California, Hawaii, and Nevada	General Services Administration, 525 Market Street, San Francisco, CA 94105.
10	Alaska, Idaho, Oregon, and Washington	General Services Administration, Administration, GSA Center, Auburn, WA 98002.
W	District of Columbia, Maryland (metropolitan-Washington, DC only), Virginia (metropolitan Washington, DC, only).	General Services Administration, National Capital Region, Washington, DC 20407.

Subpart 101–17.49—Reserved

[FR Doc. 83–5972 Filed 3–7–83; 8:45 am]
BILLING CODE 6820–23–M

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.) Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

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DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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