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U.S. GOVERNMENT
INFORMATION
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G.S.A.
411.589
12 VOLS

4-19-83
Vol. 48 No. 76
Pages 16639-16872

federal register

Tuesday
April 19, 1983

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Environmental Protection Agency

Animal Drugs
Food and Drug Administration

Coal Mining
Surface Mining Reclamation and Enforcement Office

Communications Common Carriers
Federal Communications Commission

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

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

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Presidential Documents

Title 3—

The President

Proclamation 5050 of April 15, 1983

Temporary Duty Increase and Tariff-Rate Quota on the Importation Into the United States of Certain Heavyweight Motorcycles

By the President of the United States of America

A Proclamation

1. Pursuant to section 201(d)(1) of the Trade Act of 1974 (the Trade Act) (19 U.S.C. 2251(d)(1)), as amended, the United States International Trade Commission (USITC) on February 1, 1983, reported to the President the results of its Investigation No. TA–201–47 under section 201(b) of the Trade Act (19 U.S.C. 2251(b)). The USITC determined that motorcycles having engines with total piston displacement over 700 cubic centimeters, provided for in item 692.50 of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), are being imported into the United States in such increased quantities as to be a substantial cause of the threat of serious injury to the domestic industry producing articles like or directly competitive with the imported articles. The USITC recommended the imposition of additional ad valorem duties on imports of such motorcycles of: 45 percent in the first year, 35 percent in the second year, 20 percent in the third year, 15 percent in the fourth year, and 10 percent in the fifth year.

2. On April 1, 1983, pursuant to section 202(b)(1) of the Trade Act (19 U.S.C. 2252(b)(1)), and after taking into account the considerations specified in section 202(c) of the Trade Act (19 U.S.C. 2252(c)), I determined to impose the additional duties recommended by the USITC, but with tariff-rate quotas to assure small volume producers which have not contributed to the threat of injury continued access to the United States market. In order to treat Japan fairly, I determined to provide a tariff-rate quota also for articles from Japan. On April 1, 1983, in accordance with section 203(b)(1) of the Trade Act (19 U.S.C. 2253(b)(1)), I transmitted a report to the Congress setting forth the action I determined to take and the reason it differed from the action recommended by the USITC.

3. Section 503(c)(2) of the Trade Act (19 U.S.C. 2463(c)(2)) provides that no article shall be an eligible article for purposes of the Generalized System of Preferences (GSP) for any period during which such article is the subject of any action proclaimed pursuant to section 203 of the Trade Act (19 U.S.C. 2253).

4. Section 203(e)(1) of the Trade Act (19 U.S.C. 2253(e)(1)) requires that import relief be proclaimed and take effect within 15 days after the import relief determination date.

5. Pursuant to sections 203(a)(1), 203(e)(1), and 503(c)(2) of the Trade Act (19 U.S.C. 2253(a)(1), 2253(e)(1), and 2463(c)(2)), I am providing import relief through the temporary increase of import duties imposed in the form of tariff-rate quotas, and the suspension of GSP treatment, on certain motorcycles, as hereinafter proclaimed.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including General Headnote 4 of the TSUS, sections 203, 503, and 604 of the Trade Act (19 U.S.C. 2253, 2463, and 2483), and

in accordance with Article XIX of the General Agreement on Tariffs and Trade (GATT) (61 Stat. (pt. 5) A58; 8 UST (pt. 2) 1786), do proclaim that—

(1) Part I of Schedule XX to the GATT is modified to conform to the action taken in Annex I to this proclamation.

(2) Subpart B, part 6 of schedule 6 and subpart A, part 2 of the Appendix to the TSUS are modified as set forth in Annex I to this proclamation.

(3)(a) Annex II of Executive Order No. 11888 of November 24, 1975, as amended, listing articles that are eligible for benefits of the GSP when imported from any designated beneficiary developing country, is amended by deleting item 692.50 and substituting item 692.53, as added by Annex I to this proclamation, in lieu thereof.

(b) In order to restore GSP treatment for the motorcycles subject to import relief, Annex II of Executive Order No. 11888 of November 24, 1975, as amended, is further amended by inserting in numerical sequence item 692.52, as added by Annex I of this proclamation, effective upon the termination of the import relief proclaimed herein or of any period of extension of such relief.

(4) In order to provide staged reductions in the rates of duty for those new TSUS items created by Annex I(b) to this proclamation, Annex III to Presidential Proclamation 4707 of December 11, 1979, as amended, is further amended by Annex II to this proclamation, attached hereto and made a part thereof.

(5) Whenever the column 1 rate of duty in the TSUS for any item specified in Annex I(b) to this proclamation is reduced to the same level as, or to a lower level than, the corresponding rate of duty inserted in the column entitled "LDDC" by Annex I(b) of this proclamation, the rate of duty in the column entitled "LDDC" for such item shall be deleted from the TSUS.

(6) With the exception of paragraph (3)(b), this proclamation shall be effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after April 16, 1983, and before the close of April 15, 1988, unless the period of its effectiveness is earlier expressly modified or terminated.

(7) The Commissioner of Customs shall take such action as the United States Trade Representative shall direct in the implementation and administration of the import relief herein proclaimed.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of April, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and seventh.

Ronald Reagan

Billing code 3195-01-M

ANNEX I

(a) Subpart A, part 2 of the Appendix to the TSUS is modified--

(1) by adding in numerical sequence the following new headnote 9:

"9. Tariff-rate quota as to certain motorcycles; United States International Trade Commission (USITC) surveys on such motorcycles.--The provisions of this headnote apply to item 924.20 of this subpart and shall remain in effect through April 15,1988.

(a) The additional duties on motorcycles shall be assessed on each motorcycle imported in excess of the number of motorcycles provided for each of the following countries in any year from April 16 to April 15, inclusive, as set forth in this table:

Restraint period	Quota quantity		
	Federal Republic of Germany	Japan	All other foreign countries
April 16, 1983 through April 15, 1984.....	5,000	6,000	4,000
April 16, 1984 through April 15, 1985.....	6,000	7,000	5,000
April 16, 1985 through April 15, 1986.....	7,000	8,000	6,000
April 16, 1986 through April 15, 1987.....	8,500	9,000	7,000
April 16, 1987 through April 15, 1988.....	10,000	10,000	8,000

(b) The USITC shall conduct surveys with respect to the motorcycles subject to temporary duty increases as follows:

(1) Quarterly.--Surveys by calendar quarter to obtain monthly data on U.S. production, U.S. producers' sales, shipments and inventories, U.S. importers' sales and inventories, imports for consumption, dealers' inventories, U.S. exports, employment, employee-hours, wages, prices, and apparent U.S. consumption. The initial survey shall cover the last quarter of 1982 and the first and second quarters of 1983; the last such survey shall cover the quarter which ends not less than 60 days prior to the termination of the import relief. The results of these surveys shall be published within 60 days of the end of the quarter.

(2) Annually.--Annual surveys to obtain from domestic producers data by calendar quarter on profits, unfilled orders, and inventories, annual data on capital expenditures and capacity, and a summary on an annual basis of action taken to adjust to imports and of progress in the adjustment program; and to obtain from importers data by calendar quarter on prices, unfilled orders, and inventories. The initial survey shall cover calendar year 1983, and subsequent surveys shall cover calendar years beginning with 1984. The results of each such survey shall be published by the end of the first quarter of each year thereafter so long as the import relief is in effect."

ANNEX I

-2-

(2) by inserting in numerical sequence the following new item and rates of duty:

Item	Articles	Rates of duty 1 Effective on or after April 16, 1983	1984	1985	1986	1987	2
"924.20	Motorcycles provided for in item 692.52 having engines with total piston displacement over 700 cubic centimeters, imported in excess of the quota quantities specified in headnote 9 to this subpart...	The rate provided for in item 692.52 + 45% ad val.	The rate provided for in item 692.52 + 35% ad val.	The rate provided for in item 692.52 + 20% ad val.	The rate provided for in item 692.52 + 15% ad val.	The rate provided for in item 692.52 + 10% ad val.	The rate provided for in item 692.52, but not less than the rate which would have applied had the imported article been subject to the applicable column 1 rate of duty provided herein for this item"

(b) Subpart B, part 6, schedule 6 of the TSUS is modified by deleting item 692.50 and by inserting in lieu thereof the following:

	[Motorcycles...:]			
	"Motorcycles:			
692.52	Having engines with total piston displacement over 700 cubic centimeters..	4.4% ad val.	3.7% ad val.	10% ad val.
692.53	Other.....	4.4% ad val.	3.7% ad val.	10% ad val."

ANNEX II

Annex III to Presidential Proclamation 4707 of December 11, 1979, is amended by deleting from Section A of that Annex TSUS item number 692.50 with its corresponding rates of duty and by inserting the following TSUS item numbers, rates of duty, and footnotes therein:

Item in TSUS as modified by Annex II	Rate from which staged	Rates of duty 1/, effective with respect to articles entered on and after January 1--							
		1980	1981	1982	1983	1984	1985	1986	1987
692.50 4/	5% ad val.	4.8%	4.7%	4.5%	4.4% 4/	4/	4/	4/	4/
692.52 4/	4/	4/	4/	4/	4.4% 4/	4.2%	4%	3.9%	3.7%
692.53 4/	4/	4/	4/	4/	4.4% 4/	4.2%	4%	3.9%	3.7%

4/ Item 692.50 is discontinued and superseded by items 692.52 and 692.53 effective April 16, 1983.

[FR Doc. 83-10543
Filed 4-15-83: 4:31 pm]
Billing code 3195-01-C

Presidential Documents

Proclamation 5051 of April 15, 1983

National Mental Health Week, 1983

By the President of the United States of America

A Proclamation

Mental illness costs this Nation more than $50 billion a year and contributes to declining productivity and rising health costs. Approximately 35 million people a year suffer from a diagnosable mental disorder. In addition, millions more seek professional assistance to alleviate the physical and emotional problems created by excessive stress.

These facts and figures, however, cannot describe the high cost in human suffering from mental illness. Incapacitation—most often temporary but permanent for some—may result from severe depression, crippling anxieties, or other manifestations of mental disorders. Yet public fear and misunderstanding of their illnesses place additional burdens on the afflicted and their families.

It is important that the public understand that major advancements brought about by science have made mental illnesses and stress-related disorders greatly amenable to treatment. New technologies have added significantly to the numbers of patients who have improved or recovered following treatment and promise further advances.

In recognition of the importance for our Nation of the treatment, care and support for the mentally ill provided by health professionals, volunteers, and family members, the Congress, by Senate Joint Resolution 52, has authorized and requested the President to issue a proclamation designating the week of April 10 through April 16, 1983, as National Mental Health Week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate the week beginning on April 10, 1983, as National Mental Health Week. I call upon health professionals, educators, communications media, the business community, individuals, and public and private organizations concerned with the welfare of their fellow citizens to seek and encourage better understanding of mental disorders and to honor those whose studies, treatment, and support have brought palpable gains and welcome hope to the mentally ill.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of April, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and seventh.

Ronald Reagan

[FR Doc. 83-10544
Filed 4-15-83; 4:32 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5052 of April 15, 1983

Law Day U.S.A., 1983

By the President of the United States of America

A Proclamation

Our Founding Fathers were guided by a belief in the dignity of the individual when they framed our system of government. The Constitution and the Bill of Rights guarantee the blessings of liberty to all, regardless of race, religion, or national origin. These cherished documents bequeath to all Americans the right to equal justice under law and the means to safeguard this right through the legal system.

Today marks our Nation's twenty-sixth annual celebration of Law Day, a day set aside for all Americans to reflect on our legal heritage, the rights we enjoy under our democracy, and the role of law in our society. The theme of this year's Law Day observance is "Sharing in Justice," highlighting both the rights and the responsibilities of each citizen as a participant in shaping and protecting our laws and system of justice.

Each new generation of Americans inherits as a birthright the legal protections secured, protected, and expanded by the vigilance and sacrifice of preceding generations. These rights—freedom of speech, trial by jury, personal liberty, a representative and limited government, and equal protection of the laws, to name but a few—give every citizen a vested interest in American justice.

Active participation in our system serves to protect these interests and preserve them for future generations. It is participation that begins in our own neighborhoods, at town meetings, and during open sessions of city government. Meaningful sharing and participation in our system of justice must start where one is affected most: close to home. This is the basis and strength of our Federal system. Sharing in justice also means working for objectives within the legal system, voting thoughtfully and intelligently, expressing views to our elected representatives, serving as jurors, and volunteering to make our neighborhoods, schools, and communities better places for all. The continuous involvement of the people with all levels of government makes our system of justice work.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, in accordance with Public Law 87–20 of April 7, 1961, do hereby proclaim Sunday, May 1, 1983, as Law Day U.S.A., and I invite the American people to observe this event with programs emphasizing the need for each citizen to share and participate in our system of justice.

I call upon the legal profession, schools, civic, service, and fraternal organizations, public bodies, libraries, the courts, all media of public information,

business, the clergy, and all interested individuals and organizations to focus attention on our Nation's dedication to justice. I also call upon all public officials to display the flag of the United States on all government buildings open on Law Day, May 1, 1983.

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of April, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and seventh.

Ronald Reagan

[FR Doc. 83-10545
Filed 4-15-83; 4:33 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 48, No. 76
Tuesday, April 19, 1983

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Standards for Determining Whether License Amendments Involve No Significant Hazards Considerations

Correction

In FR Doc. 83-9052 beginning on page 14864 in the issue of Wednesday, April 6, 1983, make the following correction on page 14871: In the second column, 19th line from the bottom of the page, insert "and" between "comment" and "may".

BILLING CODE 1505-01

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 4

[Docket 83-17]

Description of Office Procedures, Public Information

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (Office) is altering the organizational structure and geographic boundaries of its field offices and changing its office management structure. Administrative functions for the present 12 regional offices will be consolidated into 6 District offices. The consolidation of administrative functions in fewer offices will allow the reallocation of staff to bank supervisory activities. Additionally, 23 bank supervisory field offices will be established throughout the country. The changes are necessary to assist the Office in better positioning itself to address significant changes in the banking industry. The reorganization will permit more sophisticated bank monitoring and enhance the Office's supervisory techniques.

DATE: Effective date: April 19, 1983.

The entire reorganization will take place over an 18-month period beginning January 1, 1983. Each district reorganization is expected to be completed as follows:

(1) Central District, October 31, 1983
(2) Midwestern District, October 31, 1983
(3) Western District, January 31, 1984
(4) Southwestern District, January 31, 1984
(5) Northeastern District, May 31, 1984
(6) Southeastern District, May 31, 1984

FOR FURTHER INFORMATION CONTACT: Roberta J. Wagner, National Bank Examiner, Operations Analysis Division, (202) 287-4495, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, S.W., Washington, D.C. 20219.

SUPPLEMENTARY INFORMATION: The Office of the Comptroller of the Currency (Office) has recognized the need to anticipate significant changes in the financial services marketplace. The Office's Strategic Plan for the 1980's was formulated to establish the direction the Office must take to respond to this new environment. The Strategic Plan and the dynamic environment prompted an Office reorganization. The organizational changes detailed in this final rule ensure the best and most efficient use of personnel and strengthen the Office's ability to supervise the national banking system.

The present regional office structure of the Office will be reorganized into six district offices with headquarters in New York, New York; San Francisco, California; Chicago, Illinois; Dallas, Texas; Atlanta, Georgia; and Kansas City, Missouri. The corresponding geographic areas will be designated as the Northeastern, Western, Central, Southwestern, Southeastern, and Midwestern Districts, respectively. The district offices will perform administrative functions similar to those carried out previously in the regional offices. Also, permanently staffed field offices will be established in 23 cities including former regional office cities. The staff of these field offices will have substantial bank supervisory responsibility and will also serve as a liaison between the Office and the banking community.

Administration in the new district office will be significantly different from the present regional management structure. Each district will be headed by two senior executives—a Deputy Comptroller and a District Administrator. The Deputy Comptroller will function as the chief executive officer of a district and primarily contribute to Office policy development. The District Administrator will direct the day-to-day operation of the district. In addition, the district office structure will include a District Counsel, Directors for Administration, Bank Supervision, Analysis, and Field Office Directors.

The transition to this office structure will necessitate the phasing in of title and position changes. During the transition period, the position of Deputy Comptroller for a district will replace the position of Regional Administrator. It is the Office's intention that this transition be orderly and that no unnecessary regulation be written to cover the transition period. All delegations of authority pertaining to a Deputy Comptroller for a district shall be construed to apply to Regional Administrators until a region is merged into the newly formed district. National banks in the affected areas and other interested parties will be notified as changes occur.

Office restructuring began January 1, 1983. As of that date, regional offices in New York, San Francisco, Chicago, Dallas, Atlanta and Kansas City were designated as district offices.

Notice and Comment

The Office has determined that Notice and Comment are unnecessary under 5 U.S.C. 553(b)(A) since this rulemaking pertains to rules of agency organization and procedure.

Special Analyses

A Regulatory Flexibility Analysis is required only for rules issued for notice and comment. Because this amendment is exempt from notice-and-comment procedures, no Regulatory Flexibility Analysis will be prepared.

Section 1(a)(3) of Executive Order 12291 exempts from coverage regulations related to agency organization, management, or personnel. Since this amendment can be so

classified, no Regulatory Impact Analysis is required.

List of Subjects in 12 CFR Part 4

National banks, Organization and functions (government agencies), Public information, Official forms, District Offices, Field Offices, Procedures.

PART 4—DESCRIPTION OF OFFICE PROCEDURES, PUBLIC INFORMATION

For the reasons given in the preamble, 12 CFR Part 4 is amended as follows:

1. The authority citation for 12 CFR Part 4 reads as follows:

Authority: 12 U.S.C. 1 *et seq.*, 5 U.S.C. 552, unless otherwise noted.

2. Section 4.1a is amended by revising paragraphs (a)(6), (b) and (c) to read as follows:

§ 4.1a Central and field organization; delegations.

(a) * * *

(6) *Chief Counsel.* The Chief Counsel serves as the chief legal officer for the Office and is responsible for advising the Comptroller on all legal matters concerning the functions, activities, and operations of the Office and of all national banks. The Chief Counsel is head of the Washington Law Department and supervises the District Counsel in each of the six district offices.

* * * * *

(b) *Field Offices.* (1) During the transition period, six districts and six regions cover the United States, Puerto Rico, the Virgin Islands, Guam and the Northern Mariana Islands. The office address and the geographic composition of each follow:

District (headquarters office)	Area within district	Office address	Effective date
Northeastern (New York)	Delaware, New Jersey, New York, Pennsylvania, Puerto Rico, Vermont, Virgin Islands.	211 Avenue of the Americas, Suite 4250, New York, New York 10036	Jan.1, 1983.
Western (San Francisco)	Alaska, California, Guam, Hawaii, Idaho, Montana, Nevada, Northern Mariana Islands, Oregon, Washington.	One Market Plaza, Steuart Street Tower, Suite 2101, San Francisco, CA 94105.	Jan.1, 1983.
Central (Chicago)	Illinois, Michigan	Sears Tower, Suite 5750, 233 South Wacker Drive, Chicago, Illinois 60606.	Jan.1, 1983.
Southwestern (Dallas)	Oklahoma, Texas	1201 Elm Street, Suite 3800, Dallas, Texas 75270	Jan.1, 1983.
Southeastern (Atlanta)	Florida, Georgia, South Carolina	Peachtree Cain Tower, Suite 2700, 229 Peachtree Street, N.E., Atlanta, Georgia 30303.	Jan.1, 1983.
Midwestern (Kansas City)	Iwoa, Kansas, Missouri, Nebraska	911 Main Street, Suite 2616, Kansas City, Missouri 64105	Jan.1, 1983.

Present region	Area within region	Regional office address	Target date (future district)
Memphis Region	Alabama, Mississippi	165 Madison Avenue, Suite 800, Memphis, Tennessee 38103.	June 30, 1983 (Southeastern District).
	Arkansas, Louisiana	do	Aug. 31, 1983 (Southwestern District).
Cleveland Region	Indiana, Ohio, Kentucky	One Erieview Plaza, Cleveland, Ohio 44114	Aug. 31, 1983 (Central District).
Minneapolis Region	Wisconsin and Upper Michigan	800 Marquette Avenue, Suite 1100, Minneapolis, Minnesota 55402.	Oct. 31, 1983 (Central District).
	Minnesota, North Dakota, South Dakota	do	Oct. 31, 1983 (Midwestern District).
Denver Region	New Mexico	1405 Curtis Street, Suite 3000, Denver, Colorado 80202.	Jan. 31, 1983 (Southwestern District).
	Arizona, Colorado, Wyoming, Utah	do	Jan. 31, 1983 (Western District).
Boston Region	Maine, New Hampshire, Vermont, Connecticut, Massachusetts, Rhode Island.	Harbor Plaza, 8th Floor, 470 Atlantic Avenue, Boston, Massachusetts 02110.	Mar. 31, 1984 (Northeastern District).
Richmond Region	Maryland & the District of Columbia	F & M Center, Suite 21-51, Richmond, Virginia 23277.	May 31, 1984 (Northeastern District).
	North Carolina, Virginia, West Virginia	do	May 31, 1984 (Southeastern District).

(2) The Deputy Comptroller for a district is the chief executive officer and manager of the district and contributes to the policy development of the Office of the Comptroller of the Currency. The Deputy Comptroller of the district is assisted by a District Administrator who directs, on a day-to-day basis, the implementation of programs and policies regarding supervision and regulation of national banks. The district office structure also includes a District Counsel and various support personnel.

(c) *Delegations.* The Comptroller of the Currency has delegated to the Deputy Comptroller for each district, when the Deputy Comptroller is the senior official in the geographic area, authority to approve or disapprove for those states within that geographic area:

(1) Capital increases through stock dividends or sales of additional common stock,

(2) Changes in par value of common stock,

(3) Cash dividends pursuant to 12 U.S.C. 60 (b),

(4) Increases in investment in bank buildings and other fixed assets,

(5) Establishment of de novo operating subsidiaries for activities previously approved by the Comptroller.

When the Regional Administrator is the senior official in the geographic area, the Regional Administrator will exercise the authority delegated to the Deputy Comptroller under this subsection for those states within that geographic area.

Dated: March 22, 1983.

C. T. Conover,

Comptroller of the Currency.

[FR Doc. 83-9976 Filed 4-18-83; 8:45 am]

BILLING CODE 4810-33-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1206

Availability of Agency Records to Members of the Public

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: 14 CFR Part 1206 is amended by revising paragraph (b) in § 1206.503 to reflect the current organizational setting. "Director of Headquarters Administration to a Public Affairs Officer designated by the Director, Public Affairs Division and to the Manager or his/her designee, NASA Resident Procurement Office—JPL" is changed to read "Director, Headquarters Administration Division, to the Director, Management Support Division, Office of External Relations, and to the Manager

or designee, NASA Resident Office—JPL." Since this revision involves only agency organization and management procedures, no public comment period is required.

EFFECTIVE DATE: April 19, 1983.

ADDRESS: Management Support Division, Office of External Relations, NASA Headquarters, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Charles H. Carter, (202) 755–8439.

List of Subjects in 14 CFR Part 1206

Information, Freedom of information.

PART 1206—AVAILABILITY OF AGENCY RECORDS TO MEMBERS OF THE PUBLIC

For reasons set out in the Preamble, paragraph (b) in § 1206.503 is revised to read as follows:

§ 1206.503 NASA Headquarters.

* * * * *

(b) The functions set forth in paragraphs (a) (2) and (3) of this section may be delegated by the Director, Headquarters Administration Division, to the Director, Management Support Division, Office of External Relations, who may redelegate this responsibility to a subordinate.

James M. Beggs,

Administrator.

[FR Doc. 83-10274 Filed 4-18-83; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 4, 5, 16 and 131

[Docket No. RM80-39-000]

Regulations Governing Application for License for Major Unconstructed Projects and Major Modified Projects; Application for License for Transmission Lines Only; and Application for Amendment to License

Issued: April 8, 1983.

AGENCY: Federal Energy Regulatory Commission DOE.

ACTION: Order Granting Rehearing in Part and Denying Rehearing in Part.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an order that grants in part and denies in part a petition for rehearing of the final rule that consolidates and simplifies the requirements for certain hydroelectric project applications. These applications are for major unconstructed project licenses, major modified project licenses, transmission line only licenses, and amendments to licenses.

For reasons detailed in the rehearing order, the Commission largely denies the petitioners' request for modification of the final rule. The Commission grants rehearing and amends its rules to clarify: (1) Which exhibits must be filed in applications to amend project licenses where the proposed amendments would not alter the total proposed or installed capacity of the project, and (2) that the guidelines on Environmental Reports in Appendix A, 18 CFR Part 2, are not applicable to applications to amend licenses for water power projects. OMB Control Numbers are also added to subparts E, H, and L of 18 CFR Part 4.

EFFECTIVE DATE: The clarifications made to Appendix A in 18 CFR Part 2 and to 18 CFR 4.201 will be effective May 19, 1983.

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

SUPPLEMENTARY INFORMATION:

Order No. 184–A Order Granting Rehearing in Part and Denying Rehearing in Part

I. Introduction

On November 6, 1981, the Federal Energy Regulatory Commission (Commission) issued a final rule simplifying and consolidating the requirements for certain hydroelectric project applications under Part I of the Federal Power Act (Act).[1] These applications are for (1) major unconstructed project licenses; (2) major modified project licenses; (3) transmission line only licenses; and (4) amendments to licenses.

A timely petition for rehearing was filed by the Municipals on December 7, 1982.[2] Rehearing of the Municipals' petition solely for the purpose of further consideration was granted by Commission order on January 6, 1982.

II. Background

As noted in the preamble of the final rule, the objective of this rulemaking is to ease the informational requirements and other compliance burdens for certain hydroelectric power project applicants.[3] The rule seeks to achieve this objective in three major ways.[4] First, the rule reduces the amount of information that an applicant must submit, consistent with the needs of the Commission to meet its legal responsibilities in an informed manner. Second, the requests for the information are consolidated, to the extent feasible, where the information pertains to related subject matters. Third, the rule helps to minimize subjective interpretations of the Commission's regulations by simplifying, in a more objective and descriptive manner, the nature of the information that must be submitted by applicants.

III. Issues Raised by Municipals

The Municipals raised a number of arguments on rehearing of this rule. However, most of the arguments made by the Municipals have already been considered by the Commission in promulgating the final rule. This is particularly true of the issues concerning the type and amount of environmental information required in Exhibit E,[5] as well as the Commission's Regulatory Flexibility Act analyses.[6] In addition, some of the other arguments raised by the petitioners either reflect their continuing disagreement with policies expressed by the Commission [7] or are not ostensibly within the scope of this rulemaking.[8]

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[1] Docket No. RM80-39-000, Order No. 184, issued November 6, 1981, 46 FR 55,926 (Nov. 13, 1981); Federal Energy Guidelines, FERC Statutes and Regulations (CCH), 1977–1981 Regulations Preambles ¶ 30,308, at 31,729. The provisions of the final rule are now codified primarily in 18 CFR 4.40–4.41 (major unconstructed projects and major modified projects), 4.70–4.71 (transmission lines only), and 4.200–4.202 (amendments of licenses).

[2] "Application for Rehearing by the Northern California Power Agency, Massachusetts Municipal Wholesale Electric Company, and the Cities and Towns of Bedford, Blackstone, Culpeper, Danville, Elkton, Franklin, Front Royal, Harrisonburg, Manassas, Martinsville, Radford, Richlands, Salem, and Wakefield, Virginia" [hereinafter cited as "Municipals' Application"]. The petitioners are collectively referred to as the "Municipals."

[3] 46 FR 55,926 (Nov. 13, 1981). This rulemaking is part of the Commission's overall program of licensing reform for hydroelectric power projects. For a brief discussion of the other phases of this program, *see* 46 FR 55,926–27.

[4] 46 FR 55,927.

[5] *See* 46 FR 55,927–31. The Municipals claim, on the one hand, that the rule eliminates too much information while also arguing, on the other hand, that not enough information is required. *Compare* pp. 2–4 *with* pp. 6, 9–10 of Municipals' Application, *supra* note 2.

[6] *See* 46 FR 55,933.

[7] *E.g., compare* Municipals' Application, at 4 (handicapped access to recreational resources) *with* 46 FR 55,930. The Commission notes that implicit in the consideration of the needs of the physically handicapped is the concept of reasonableness. Also *compare* Municipals' Application, at 2–3, 6–7 (socio-economic environmental information and competing applications for license amendments) *with* 46 FR 55,930, 55,931.

[8] *E.g.*, Municipals' Application, at 8 (competing application requirements under § 4.33) and at 10 (discussing ownership rights under § 4.30(d) in Docket No. RM81-15). Note also that most, if not all,

The Commission finds it unnecessary, for the most part, to elaborate further since the preamble of the final rule specifically addresses most of the Municipals' assertions. Several points, however, warrant some additional explanation.

As a general matter, the Municipals appear to believe that the information required in these types of project applications (particularly the environmental information) is insufficient for the Commission to fulfill its statutory responsibilities. The Commission disagrees. While some information may have been eliminated, a great deal of the requested information is either consolidated or identified in a simpler but no less complete way.[9] This has been done while giving full consideration to the statutory and other responsibilities that the Commission has.[10]

In addition, the Commission has also made it clear that environmental information must be "commensurate with the size and type of water power project for which the applicant seeks a license or with the scope of any proposed amendment to an existing license."[11] Rather than attempt to detail in the regulations the information that is appropriate for each and every potential project and project site, the Commission believes that flexibility in requiring information is preferable.[12]

With respect to the Municipals' arguments concerning the appropriate exhibits to be filed with an application to amend a license, the Commission has reexamined §§ 4.200–202 and finds that some clarification is necessary. The current regulations are not sufficiently clear with respect to the information required in an application to amend a license where the proposed amendment(s) would not affect the actual or proposed total installed capacity of the project. Such an amendment might, for example, involve dam safety matters. For these non-capacity related amendments, the Commission does not need all of the exhibits that might be thought to be required under § 4.201 (a) and (b).

The Commission is, therefore, granting rehearing to the extent of adding a new § 4.201(c) to clarify that only the exhibits actually affected by a proposed, non-capacity related amendment need to be submitted with the applicant's initial statement required under § 4.201(a).[13] This clarification codifies the current practice of the Commission regarding this type of license amendment application. For applications proposing capacity related amendments, the requirement to submit the exhibits identified in § 4.201(b) remains the same.[14]

The Municipals also object to the elimination of the requirement in former § 4.41, Exhibit T, that an applicant state why development and operation of the project by the applicant and not the federal government would be best adapted to a comprehensive plan for improving or developing the waterway. Contrary to the Municipals' argument, the elimination of Exhibit T does not prevent the Commission from making any determination or finding required by law, including that found in section 7(b) of the Federal Power Act.[15] The statement formerly required of an applicant is not a necessary prerequisite or ingredient for the Commission to comply with section 7(b). It is our judgment that the rule, as promulgated, does not interfere with the Commission's ability to carry out this or any other statutory responsibility.

Finally, the Municipals claim the title of Appendix A in 18 CFR Part 2 might mislead an applicant to believe that Appendix A applies to an application to amend a water power project license. As noted in the final rule, Appendix A does not apply to such an application. To avoid any possible confusion, the title of Appendix A has been clarified to read "Guidelines for the Preparation of Environmental Reports for Applications under the Federal Power Act, other than Applications for Preliminary Permit, *License, and Amendment to License* for Water Power Projects" (new language emphasized).

For the Foregoing Reasons, the Commission Orders That:

(1) The Application for Rehearing by the Municipals is denied in part; and

(2) The foregoing Application is granted in part, to the extent of the clarifications to 18 CFR Part 2, Appendix A; 18 CFR 4.201; and the source citations for 18 CFR Part 4, Subparts E, H, and L, as set forth below.

List of Subjects in 18 CFR Part 4

Electric power.

(Federal Power Act, as amended, 16 U.S.C. 792–828c; Public Utility Regulatory Policies Act of 1978, as amended, 16 U.S.C. 2601–2645; Department of Energy Organization Act, 42 U.S.C. 7101–7352; Executive Order 12009, 3 CFR Part 142 (1979); 5 U.S.C. 553)

In consideration of the foregoing, Chapter 1 of Title 18, Code of Federal Regulations, is amended as set forth below, effective 30 days from date of publication in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 2—GENERAL POLICY AND INTERPRETATION

1. The title of Appendix A in Part 2 is revised to read as follows:

Appendix A—Guidelines for the Preparation of Environmental Reports for Applications Under the Federal Power Act, Other Than Applications for Preliminary Permit, License, and Amendment to License for Water Power Projects

* * * * *

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATIONS OF PROJECT COSTS

2. In § 4.201, paragraph (b) introductory text is revised, paragraph (c) is redesignated as paragraph (d), a new paragraph (c) is added, and

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of the information formerly required by Exhibit K on the project area and ownership or occupancy rights for that area is now required in Exhibit G under § 4.41.

[9] For example, dam safety matters are covered by Exhibit E [§ 4.41(f)(6)] and 18 CFR 12.1–12.44; transmission and interconnection information is covered by Exhibits A and B [§§ 4.41 (b)(4)–(5), (c) (2), (5)]; construction procedures are addressed in Exhibit C [§ 4.41(d)] and in 18 CFR 12.1–12.44; descriptions of water usage and watershed information are covered by Exhibits B and E [§§ 4.41 (c), (f) (1), (2), (8)]; and impacts on air, noise, or solid waste vis a vis the proposed project and fish, wildlife, water quality, soil, recreational resources, aesthetic resources, and land use are covered, to the extent relevant, under Exhibit E [§ 4.41(f)].

[10] *See, e.g.*, 46 FR 55,927, cols. 1 and 3.

[11] 46 FR 55,927, col. 2.

[12] The same flexibility is appropriate with respect to applications for amendments to licenses under § 4.200–4.202, notwithstanding petitioners' apparent disagreement with our previous discussion. *Compare* 46 FR at 55, 928, 55,931 *with* Municipals' Application, at 6–7.

[13] Current § 4.201(c) is redesignated as § 4.201(d).

[14] The petitioners also point out that a short-form Exhibit E under § 4.61 can be submitted in an application to amend license for a constructed project with total capacity over 5 Mw. Municipals' Application, at 6. This understanding most likely arises from a typographical error in § 4.201(b)(5) of the final rule, 46 FR 55,944. The citation in § 4.201(b)(5) should be to "§ 4.51 of this chapter" and not "§ 4.61 of this chapter." Thus, under § 4.201(b), an application for a constructed project with capacity of 1.5 Mw to 5 Mw must contain an Exhibit E under § 4.61 while an application for a constructed project over 5 Mw must have an Exhibit E under § 4.51. A correction notice has been issued on January 17, 1983, to clarify the regulations.

In addition, since the Municipals raise the issue of compliance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, the clarifications made by this Order include the addition of the relevant OMB Control Numbers.

[15] Section 7(b) of the Federal Power Act, 16 U.S.C. 800(b), states in pertinent part:

Whenever, in the judgment of the Commission, the development of any water resources for public purposes should be undertaken by the United States itself, the Commission shall not approve any application for any project affecting such development, . . .

redesignated paragraph (d)(2) is revised, to read as follows:

§ 4.201 Contents of application.

* * * * *

(b) *Required exhibits for capacity related amendments.* Any application to amend a license for a water power project that would alter the actual or proposed total installed capacity of the project must contain the following exhibits, or revisions or additions to any exhibits on file, *commensurate with the scope of the licensed project:*

* * * * *

(c) *Required exhibits for non-capacity related amendments.* Any application to amend a license for a water power project that would not alter the actural or proposed total installed capacity of the project must contain those exhibits that require revision in light of the nature or the proposed amendments.

(d) *Consultation and waiver.* * * *

(2) A licensee wishing to file an application for amendment of license under this section may seek advice from the Commission staff regarding which exhibits(s) must be submitted and whether the proposed amendment is consistent with the scope of the existing licensed project.

3. The source citations in 18 CFR Part 4, Subparts E, H, and L, are revised to read as follows:

* * * * *

Subpart E—Application for License for Major Unconstructed Project and Major Modified Project

Source: Order 184, 46 FR 55926, Nov. 13, 1981, unless otherwise noted.

OMB Control No. 1902 0058.

* * * * *

Subpart H—Application for License for Transmission Line Only

Source: Order 184, 46 FR 55926, Nov. 13, 1981, unless otherwise noted.

OMB Control No. 1902 0115.

* * * * *

Subpart L—Application for Amendment of License

Source: Order 184, 46 FR 55926, Nov. 13, 1982, unless otherwise noted.

OMB Control No. 1902 0058, 1902 0115.

* * * * *

[FR Doc. 83-10045 Filed 4-18-83; 8:45 am]

BILLING CODE 6717-01-M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1300

Ethical and Other Conduct Standards and Responsibilities of Employees and Special Government Employees; Statements of Employment and Financial Interests; Amendment and Annual Revision of Appendix

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of annual revision.

SUMMARY: TVA regulations require employees in certain positions to submit annual Statements of Employment and Financial Interests. Employees at TVA pay grades M-5, M-6, and M-7 who must file Statements of Employment and Financial Interests are identified and listed in an appendix to this regulation. A revised appendix is published annually in the **Federal Register.** This notice announces that annual revision.

EFFECTIVE DATE: The appendix is updated for the purpose of inclusion in the Code of Federal Regulations, and for that purpose is effective April 19, 1983. The revisions became effective for individual employees upon receipt of actual notice.

ADDRESS: Relevant comments may be sent to the Division of Personnel, Tennessee Valley Authority, Knoxville, Tennessee 37902.

FOR FURTHER INFORMATION CONTACT: Herbert S. Sanger, Jr., General Counsel, Tennessee Valley Authority, Knoxville, Tennessee 37902, telephone 615-632-2241.

SUPPLEMENTARY INFORMATION: TVA's Code of Ethical Standards, in accordance with 16 U.S.C 831-831dd (1976; Supp. V, 1981), implements the requirements of E.O. No. 11222 and has been previously published or referenced in the **Federal Register** as follows:

33 FR 19,168, December 24, 1968
34 FR 15,750, October 11, 1969
35 FR 13,364, August 21, 1970
38 FR 15,075, June 8, 1973
42 FR 2668, January 13, 1977
42 FR 65,143, December 30, 1977
46 FR 30,682, July 9, 1982

This list of positions at grades M-5, M-6, and M-7 for which Statements of Employment and Financial Interests are required to be filed is being revised. Those positions, described generally in paragraphs (2) and (3) of that section, are specifically identified by organization, title, and pay grade in the appendix to the sections. Changes in duties and responsibilities of specific positions, changes in organizational structures, or addition of new positions may creates or remove the need for incumbents to submit statements under the general description contained in the section. Accordingly, subsection (b) provides for annual republication of the updated, revised appendix.

PART 1300—[AMENDED]

§ 1300.735-41 [Amended]

The appendix to § 1300.735-41 is revised to read as follows:

Appendix

As provided in § 1300.735-41(b), employees in the following positions, which are described in § 1300.735-41(a) (2) and (3), must submit Statements of Employment and Financial Interests:

Office of the General Manager

Assistant to Manager, Office, grade M-7
District Administrator, grade M-7
Chief, Staff, grade M-5

Information Office

Chief, Citizen Action Office, grade M-7
Coordinator, grade M-7
Manager, Information Services, grade M-7
Assistant Chief, Citizen Action Office, grade M-6
Chief, Broadcast/Audiovisual Staff, grade M-6
Manager, Energy Education, grade M-6
Manager, Information Services, grade M-6
Manager, Media Relations, grade M-6
Chief, Employee Communications Staff, grade M-5
Manager, Information Services, grade M-5
Manager, News Desk, grade M-5

Office of Audit and Evaluation

Assistant Chief, Branch, Corporate Industrial Engineering Branch, grade M-6
Assistant General Auditor, grade M-6
Audit Supervisor, External, grade M-6
Audit Supervisor, Internal, grade M-6
Supervisor, Program Evaluations Section, grade M-6
Industrial Engineer, grade M-5
Program Analyst, grade M-5
Supervisor, Section, grade M-5 (All)

Office of Coal Gasification

Chief, Branch, grade M-6
Assistant to the Program Manager, grade M-6
Chemical Engineer, grade M-6
Chief, Business Staff, grade M-6
Head, Group, grade M-6 (All)
Chief, Operations Staffs, grade M-5
Project Staff Engineer, grade M-5
Supervisor, Section, grade M-5 (All)
Supervisor, Staff, grade M-5 (All)

Divsion of Finance

Chief, Branch, Knoxville Accounting Branch, grade M-7
Treasurer, grade M-7
Assistant Chief, Branch, Muscle Shoals Accounting Branch, grade M-6
Assistant, Chief, Branch, Retirement Services Branch, grade M-6
Supervisor, Accounting Services, grade M-6
Supervisor, Accounting Section, grade M-5

Supervisor, Accounting Quality Assurance Section, grade M–5
Supervisor, Accounts Payable Section, grade M–5
Supervisor, Benefits Section, grade M–5
Supervisor, Distributive Services Accounting Section, grade M–5
Supervisor, Payroll Section, grade M–5

Office of the General Counsel

Attorney (Community, Industrial, and Chemical Development), grade M–7
Attorney (Natural Resources Development), grade M–7
Attorney (Nuclear Regulatory and Environmental Laws and Regulations), grade M–7
Attorney (Procurement and Business), grade M–7
Attorney (Reservoir Properties, Permits), grade M–7
Attorney (Patents), grade M–6

Office of Agricultural and Chemical Development

Manager's Office

Assistant to the Manager of Agricultural and Chemical Development, grade M–7
Chief, Staff, Budget and Cost Control Staff, grade M–7
Program Manager, grade M–7
Agriculturist, grade M–6
Assistant Project Manager, grade M–5
Personnel Officer, grade M–5
Supervisor, Safety Engineering Services, grade M–5

Division of Agricultural Development

Chief, Branch, grade M–7
Senior Scientist, grade M–7
Assistant to the Director of Agricultural Development, grade M–6
Assistant Chief, Branch, grade M–6
Program Manager, grade M–6 (All)
Supervisor, Section, grade M–6 (All)
Assistant to the Chief of Agricultural Research Branch, grade M–5
Supervisor, Administrative Services, grade M–5

Division of Chemical Development

Chief, Branch, grade M–7
Project Manager, grade M–7
Assistant Chief, Design Branch, grade M–6
Assistant Project Manager, grade M–6
Chief, Services, Administrative Services, grade M–6
Electrical Engineer (Contract Administration), grade M–6
Mechanical Engineer (Contract Administration), grade M–6
Civil Engineer (Contract Administration), grade M–5
Mechanical Engineer (Contract Administration), grade M–5

Division of Chemical Operations

Chief, Branch, grade M–7
Assistant Chief, Branch, grade M–6
Supervisor, Central Services Section, grade M–5

Office of Economic and Community Development

Assistant to the Office Manager, grade M–7
Chief, Branch, grade M–7
Economist, grade M–6
Program Delivery Center Manager, grade M–6 (All)
Program Manager, grade M–6 (All)
Supervisor, Section, grade M–6 (All)
Chief, Staff, grade M–5 (All)
Coordinator, grade M–5 (All)
Economist, grade M–5 (All)
Program Coordinator, grade M–5 (All)
Program Manager, Minority Economic Development Section, grade M–5
Program Manager, Regional Studies and Mitigation Section, grade M–5
Program Manager, Skills Development Section, grade M–5
Program Manager, Program Delivery Center, Nashville, grade M–5
Program Manager, Special Opportunities Counties and Cities and Enterprise Development Section, grade M–5
Regional Planner, grade M–5
Supervisor, Section, grade M–5 (All)
Supervisor, Unit, grade M–5 (All)
Supervisor, Section, grade M–5 (All)
Supervisor, Unit, grade M–5 (All)

Office of Engineering Design and Construction

Manager's Office

Project Staff Engineer, grade M–7 (All)
Chief, Staff, Management Systems Staff, grade M–6
Project Manager, grade M–6
Assistant Project Manager, grade M–5
Supervisor, Field Office Inspection Unit, grade M–5

Division of Engineering Design

Chief, Branch, grade M–7
Civil Engineer, grade M–7 (All)
Design Project Manager, Environmental Design Project, grade M–7
Electrical Design Project Engineer, grade M–7 (All)
Electrical Engineer, grade M–7 (All)
Geologist, grade M–7
Mechanical Design Project Engineer, grade M–7 (All)
Mechanical Engineer, grade M–7 (All)
Project Engineer, Deferred Nuclear Unit Project, grade M–7 (All)
Project Manager, grade M–7 (All)
Architect, grade M–6 (All)
Assistant to the Chief, Branch, grade M–6 (All)
Assistant Head, Group, Nuclear Steam Supply Materials and Radwaste, grade M–6
Assistant to Design Project Manager, Sequoyah and Watts Bar Design Project, grade M–6
Assistant to Project Manager, Investment Recovery Project, grade M–6
Civil Design Project Engineer, grade M–6 (All)
Civil Engineer, Administrative Services, Civil Engineering Support Branch, grade M–6
Civil Engineer, Structural Engineering Section, Civil Engineering Support Branch, grade M–6
Civil Engineer, Project Management Staff, Boiling Water Reactor Project, grade M–6
Electrical Design Project Engineer, grade M–6
Materials Engineer, grade M–6
Mechanical Design Project Engineer, grade M–6
Mechanical Engineer, Staff Specialist, Mechanical Engineering Support Branch, grade M–6
Nuclear Engineer, Nuclear Safety Analysis Staff, Nuclear Engineering Support Branch, grade M–6
Quality Assurance Engineer, grade M–6
Electrical Engineer, Communication – Equipment Section, Electrical Engineering Support Branch, grade M–5
Project Engineer, Chattanooga Office Complex Project, grade M–5
Supervisor, Section, Codes, Standards, and Materials Section, grade M–5
Supervisor, Section, Contract Engineering Section, grade M–5
Supervisor, Section, Heavy Equipment Design Section, grade M–5
Supervisor, Section, Manpower Management Section, grade M–5
Supervisor, Section, NSSS, Stride, and BOP Engineering Section, grade M–5
Supervisor, Section, Nuclear Analysis Section, grade M–5
Supervisor, Section, Nuclear Steam Supply Section, grade M–5 (All)
Supervisor, Section, Quality Assurance Audit Section, grade M–5
Supervisor, Section, Quality Assurance Engineering Section, grade M–5
Supervisor, Section, Reliability and Availability Section, grade M–5
Supervisor, Section, Reprographic/ Administrative Services Section, grade M–5
Supervisor, Section, Systems Analysis Section (No. 3), grade M–5

Division of Construction

Chief, Management Services Branch, grade M–7
Construction Engineer, grade M–7 (All)
General Construction Superintendent, grade M–7 (All)
Project Manager, Yellow Creek Nuclear Plant, grade M–7
Assistant Construction Engineer, Phipps Bend Nuclear Plant, grade M–6
Assistant to the Manager (Administrative), grade M–6
Chief, Project Management Services, grade M–6
Chief, Staff, grade M–6 (All)
Project Engineer, grade M–6
Supervisor, Section, Management Services Section, grade M–5
Supervisor, Unit, Warehouse Services Unit, grade M–5 (All)
Welding Engineer, grade M–5

Office of Management Services

Labor Relations Staff

Assistant to Director of Labor Relations, grade M–7
Chief, Salary Policy Contract Administration, grade M–7
Chief, Trades and Labor Contract Administration, grade M–7
Chief, Negotiations Support Staff, grade M–6

Division of Management Systems

Chief, Branch, grade M–7
Chief, Staff, Information Resources Management Staff, grade M–7
Assistant Chief, Information Resources Management Staff, grade M–6

Chief, Management Services Staff, grade M-6
Manager, Technical Services Development Section, grade M-6
ADP Planner, grade M-5
Assistant to Chief, Systems Development Services Branch, grade M-5
Supervisor, Section, Facilities Evaluation and Acquisition, grade M-5
Supervisor, Section, Operating Services Section, grade M-5

Division of Personnel

Chief, Branch, grade M-7
Chief, Branch, grade M-6
Supervisor, Administrative Services, grade M-5

Division of Property and Services

Assistant to Director of Property and Services, grade M-7
Chief, Branch, grade M-7
Title Attorney, grade M-7
Assistant Chief, Land Branch, grade M-6
Assistant to Chief, Employee Transportation Branch, grade M-6
Coordinator, Office Service Branch, grade M-6
Librarian, grade M-6
Supervisor, Section, grade M-6 (All)
Supervisor, Services, Reprographics and Record Services Group, grade M-6
Airplane Pilot, grade M-5
Assistant to Chief, Office Service Branch, grade M-5
Building Management Specialist, grade M-5
Chief, Services, Management Services, grade M-5
District Manager, grade M-5
Supervisor, Section, grade M-5 (All)
Supervisor, Services, Reproduction and Word Processing Section, grade M-5
Supervisor, Unit, grade M-5 (All)

Public Safety Service

Supervisor, Management Services Staff, grade M-6
Supervisor, Area Operations Section, grade M-5
Supervisor, Nuclear Compliance Staff, grade M-5
Supervisor, Nuclear Operations Section, grade M-5
Supervisor, Personnel and Budget Section, grade M-5

Division of Purchasing

Assistant to the Director of Purchasing, grade M-7
Chief, Branch, grade M-7
Chief, Staff, Procurement Support Staff, grade M-7
Assistant Chief, Branch, grade M-6
Assistant Chief, Staff, grade M-6
Chief, Staff, grade M-6
Assistant Chief, Staff, Procurement Systems Staff, grade M-5
Procurement Analyst, grade M-5
Purchasing Agent, grade M-5
Supervisor, Section, grade M-5 (All)

Division of Occupational Health and Safety

Assistant to the Director of Occupational Health and Safety, grade M-7
Chief, Branch, grade M-7
Chief, Branch, Technical Support Branch, grade M-6
Supervisor, Section, grade M-6 (All)
Chief, Staff, Management Services Staff, grade M-5
Hazard Control Engineer, grade M-5
Industrial Hygienist, grade M-5
Personnel Officer, grade M-5
Supervisor, Section, grade M-5 (All)
Supervisor, Staff, Automated Data Processing Staff, grade M-5
Supervisor, Unit, grade M-5 (All)

Radiological Health Staff

Chief, Branch, Health Physics Services Branch, grade M-7
Chief, Branch, Laboratory Services Branch, grade M-6
Supervisor, Section, grade M-6 (All)
Health Physicist, grade M-5
Supervisor, Section, grade M-5 (All)
Supervisor, Unit, Health Physics Support Unit, grade M-5

Division of Medical Services

Chief, Area Medical Service, grade P-4
Chief, Branch, grade M-7
Medical Administrator, grade M-7
Assistant Medical Administrator, grade M-6
Assistant Chief, Staff, Technical Project Unit, grade M-5
Chief of Nursing, grade M-5
Personnel Officer, grade M-5
Psychologist, grade M-5
Supervisor, Section, Systems and Data Processing Section, grade M-5

Office of Natural Resources

Air Resources Program

Chief, Program, grade M-7
Supervisor, Section, Research Section, grade M-6

Division of Land and Forest Resources

Chief, Management Services, grade M-7
Manager, Land Planning and Management, grade M-7
Manager, Resource Programs, grade M-7
Program Manager, grade M-6 (All)
Project Manager, Forest Industry Development, grade M-6
Project Manager, grade M-6 (All)
Chief Archaeologist, grade M-5
Program Manager, grade M-5 (All)
Project Manager, grade M-5 (All)
Senior Terrestrial Ecologist, grade M-5
Senior Wetland Ecologist, grade M-5
Staff Forester, grade M-5
Supervisor, Section, grade M-5 (All)
Supervisor, Staff, Data Analysis Staff, grade M-5

Land Between the Lakes

Chief, Branch, grade M-6
Assistant Chief, Branch, Recreation, Interpretation, and Environmental/Energy Education Branch, grade M-5
Civil Engineer, grade M-5
General Foreman, grade M-5
Land Use Specialist, grade M-5
Program Manager, grade M-5
Supervisor, Section, grade M-5 (All)

Division of Natural Resource Operations

Assistant to the Director of Natural Resource Operations, grade M-7
Chief, Branch, grade M-7
Manager, Operations, grade M-7
Assistant Chief, Branch, grade M-6
Chief, Branch, Laboratory Branch, grade M-6
Chief, Services, Administrative and Personnel Services, grade M-6
Program Manager, Geographic Information Services Branch, grade M-6
Supervisor, Operations, grade M-6 (All)
Civil Engineer, Data Services Branch, grade M-5
Coordinator, grade M-5 (All)
Instrument Engineer, Data Services Branch, grade M-5
Personnel Officer, grade M-5
Project Manager, Data Services Branch, grade M-5
Project Manager, Geographic Information Services Branch, grade M-5
Research Chemist, grade M-5
Supervisor, Section, grade M-5 (All)
Supervisor, Services, Administrative Services, grade M-5
Supervisor, Staff, grade M-5 (All)
Supervisor, Unit, Field Operations Eastern Area, grade M-5

Division of Water Resources

Chief, Branch, grade M-7
Assistant to the Director of Water Resources, grade M-6

Office of Power

Power Manager's Office and Staffs

Assistant Chief, Staff, grade M-7
Head, Group, Power System and Analysis Group, grade M-7
Head, Group, Program Planning Group, grade M-7
Assistant Chief, Management Services Staff, grade M-6
Chief, Staff, Systems Planning and Development Staff, grade M-6
Power Planning Advisor, grade M-6
Supervisor, Safety Engineering Service, grade M-6

Division of Energy Conservation and Rates

Chief, Branch, grade M-7
Chief, Staff, Planning and Communication Staff, grade M-7
Assistant to Chief, Branch, grade M-6
Supervisor, Section, grade M-6 (All)
Economist, grade M-5
Project Manager, grade M-5 (All)
Research Analyst, grade M-5
Staff Rate Assistant, grade M-5
Supervisor, Section, grade M-5 (All)
Supervisor, Services, Energy Conservation and Solar Training Section, grade M-5
Supervisor, Unit grade M-5 (All)

Division of Energy Demonstrations and Technology

Chief, Branch, grade M-7
Chief, Staff, Planning and Budget Staff, grade M-7
Program Manager, grade M-6 (All)
Project Manager, AFBC Demonstration Plant Section, grade M-6
Project Manager, Systems Improvement, grade M-6
Supervisor, Section grade M-6 (All)
Coordinator, Project Management and Project Engineering, grade M-5
Mechanical Engineer, grade M-5
Personnel Officer, grade M-5

Project Coordinator, Advanced Systems, grade M-5
Project Manager, grade M-5 (All)
Research Analyst, grade M-5
Research Chemist, grade M-5
Supervisor, Section, grade M-5 (All)
Supervisor, Services, grade M-5 (All)

Division of Energy Use and Distributor Relations

Assistant to the Director, grade M-7
Chief, Branch, grade M-7
Chief, Staff, Analysis Staff, grade M-7
District Manager, grade M-7
Senior District Advisor, grade M-7
Assistant Chief, Branch, grade M-6
Assistant District Manager, grade M-6

Division of Fossil and Hydro Power

Assistant Chief, Branch, grade M-7
Chief, Branch, grade M-7
Power Plant Superintendent, Watts Bar Steam Plant, grade M-7
Superintendent, Hydro Operations, grade M-7
Assistant Chief, Branch, Plant Improvement Branch, grade M-6
Chemical Engineer, grade M-6
Environmental Engineer, grade M-6
Mechanical Engineer, grade M-6
Power Plant Superintendent, Wilson, grade M-6
Project Coordinator, Plant Equipment Branch, grade M-6
Supervisor, Industrial Safety and Fire Protection Engineering, grade M-6
Supervisor, Services, grade M-6 (All)
Power Plant Superintendent, grade M-5 (All)
Supervisor, Section, grade M-5 (All)*

Division of Fuels

Chief, Branch, grade M-7
Chief, Staff, Special Projects Staff, grade M-7
Assistant Chief, Branch, grade M-6
Head, Group, grade M-6
Nuclear Engineer, grade M-6
Project Engineer, grade M-6
Fuels Engineer, grade M-5
Nuclear Engineer, grade M-5
Project Manager, grade M-5 (All)
Supervisor, Section, grade M-5 (All)
Supervisor, Staff, grade M-5 (All)
Supervisor, Administrative Services, grade M-5

Division of Nuclear Power

Chief, Branch, grade M-7
Assistant Chief, Branch, Field Services Branch, grade M-6
Chemical Engineer, grade M-6
Chief, Staff, Quality Assurance and Compliance Branch, grade M-6
Head, Group, grade M-6
Mechanical Engineer, grade M-6
Metallurgy Engineer, grade M-6
Nuclear Engineer, grade M-6
Personnel Officer, grade M-6
Supervisor, Staff, grade M-6 (All)

Operations Support

Assistant Chief, Power Projects Staff, grade M-7
Assistant to the General Manager, grade M-7
Chief, Branch, grade M-7
Program Manager, grade M-7
Superintendent, Power Service Shops, grade M-7
Assistant Quality Assurance Manager, grade M-6
Assistant Superintendent, Service Shops, grade M-6
Chief, Branch, grade M-6
Chief, Services, Central Laboratories, grade M-6
Environmental Engineer, grade M-6
Head, Group, grade M-6
Manager, QI, Project Management Corporation, grade M-6
Nuclear Engineer, grade M-6
Staff Engineer, grade M-6
Supervisor, Section, grade M-6
Assistant to the Chief, Branch, grade M-5
Assistant Supervisor, Section, grade M-5
Environmental Engineer, grade M-5
Power Supply Engineer, grade M-5
Project Manager, grade M-5
Staff Engineer, grade M-5
Supervisor, Group, grade M-5
Supervisor, Measurement Laboratory, grade M-5
Supervisor, Section, grade M-5

Power System Operations

Chief, Branch, grade M-7
Supervisor, Section, grade M-5

Transmission System Engineering and Construction

Area Construction Manager, grade M-7
Chief, Branch, grade M-7
Chief, Project Services, grade M-7
Assistant Chief, Branch, grade M-6
Civil Engineer, grade M-6
Electrical Engineer, grade M-6
General Construction Superintendent, grade M-5
Supervisor, Section Civil Engineering and Design Branch, grade M-5
Supervisor, Section Electrical Engineering and Design Branch, grade M-5
Supervisor, Section, Technical Services, grade M-5

Dated: April 12, 1983.

W. F. Willis,

General Manager.

[FR Doc. 83-10349 Filed 4-18-83; 8:45 am]
BILLING CODE 8120-01-M

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18 CFR Part 1310

Administrative Cost Recovery

AGENCY: Tennessee Valley Authority.

ACTION: Final rule.

SUMMARY: This final rule establishes a schedule of charges to be imposed in connection with the disposition and uses of, and activities affecting, real property in TVA custody and control, and certain other activities in order to help ensure that such activities are self-sustaining to the full extent possible. The regulations are promulgated under authority of the Tennessee Valley Authority Act of 1933, as amended, and Title V of the Independent Offices Appropriations Act of 1952 which authorize TVA to prescribe for certain work or service performed by TVA such fee, charge, or price as it determines to be fair and equitable. The final rule will require payment to TVA of certain charges associated with the disposition and use of real property in TVA custody and control and the resolution of violations of Section 26a of the TVA Act which requires that TVA approve plans for the construction, operation, or maintenance of dams, appurtenant works, or other obstructions affecting navigation, flood control, or public lands or reservations in the Tennessee River system, prior to the construction, commencement of construction, operation, or maintenance of such structures. The final rule does not apply to charges for the cost of environmental investigations which may be assessed as provided in section 5.7.2 of TVA's procedures implementing the National Environmental Policy Act (45 FR 54511–15).

EFFECTIVE DATE: May 19, 1983.

FOR FURTHER INFORMATION CONTACT: John R. Paulk, Director of Land and Forest Resources, Tennessee Valley Authority, 101 Natural Resources Building, Norris, Tennessee 37828, (615) 632–6450.

SUPPLEMENTARY INFORMATION: TVA has determined that this rule will not be a "major" rule under Executive Order No. 12291 and will not have a significant economic impact on a substantial number of "small entities" as defined by the Regulatory Flexibility Act (5 U.S.C. 601(6)).

TVA has determined in accordance with section 5.2.24 of TVA's procedures implementing the National Environmental Policy Act (45 FR 54,511–15) that the proposed rulemaking is of a type that does not have a significant impact on the human environment. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

TVA published the proposed rulemaking in the **Federal Register** on December 23, 1982 (47 FR 57,297–98) and invited comments for 30 days ending January 24, 1983. No comments were received.

Accordingly, TVA is promulgating this final rule as proposed, with the exception of one minor addition for clarity. In § 1310.2(b)(5), the words "and abandonment" have been added after "Conveyance" so that the section clearly exempts all transactions otherwise covered by § 1310.2(a)(1) when such transactions are without charge to States and municipalities, and political subdivisions and agencies thereof.

List of Subjects in 18 CFR Part 1310

Government property.

For the reasons set out in the preamble, Title 18 of the Code of Federal Regulations is amended by adding a new Part 1310 reading as follows:

PART 1310—ADMINISTRATIVE COST RECOVERY

Sec.
1310.1 Purpose.
1310.2 Application.
1310.3 Assessment of administrative charge.

Authority: Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831–831dd); Title V, Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701).

§ 1310.1 Purpose.

The purpose of the regulations in this part is to establish a schedule of fees to be charged in connection with the disposition and uses of, and activities affecting, real property in TVA's custody or control, and certain other activities in order to help ensure that such activities are self-sustaining to the full extent possible.

§ 1310.2 Application.

(a) TVA will undertake the following actions only upon the condition that the applicant pay to TVA such administrative charge as the Director of Land and Forest Resources or Chief of the Power Management Services Staff (hereinafter "responsible land manager"), as appropriate, shall assess in accordance with § 1310.3 of this part; provided, however, that no payment shall be required where the responsible land manager determines that there is a corresponding benefit to TVA:

(1) Conveyance and abandonment of TVA land or landrights, except as provided in paragraph (b)(5) of this section.

(2) Other private uses of TVA land not involving the disposition of TVA real property or interests in real property.

(3) Actions taken to suffer the presence of unauthorized fills and structures over, on, or across TVA land or landrights, and including actions not involving the abandonment or disposal of TVA land or landrights.

(4) Actions taken to approve fills or structures constructed either without prior approval of plans under Section 26a of the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831y–1), and TVA's regulations issued thereunder at 18 CFR Part 1304, or not in accordance with such plans previously approved by TVA.

(b) *Exemption.* An administrative charge shall not be made for the following actions:

(1) Agricultural licenses.

(2) Firewood cutting permits and timber sale contracts.

(3) Permits for the nonexclusive short-term use of TVA land.

(4) Uses of TVA land, at no charge, for utility line crossings, not involving the disposition of TVA real property or interests in real property.

(5) Conveyance and abandonment of TVA land or landrights at no charge to States and municipalities, and political subdivisions and agencies thereof.

(6) Conveyances pursuant to section 4(k)(d) of the Tennessee Valley Authority Act of 1933, as amended (16 U.S.C. 831c(k)(d)).

(7) Releases of unneeded mineral right options.

(8) TVA phosphate land and mineral transactions.

(9) Permits and licenses for use of TVA land by distributors of TVA power.

§ 1310.3 Assessment of administrative charge.

(a) *Range of charges.* Except as otherwise provided herein, the responsible land manager shall assess a charge which he determines in his sole judgment to be approximately equal to the administrative costs incurred by TVA for each action including both the direct cost to TVA and applicable overheads. With respect to the following categories of actions, a charge of not less than the minimum or greater than the maximum amount specified herein shall be assessed except as otherwise provided in paragraph (c) of this section.

(1) Land transfers—$500–$4,400.

(2) Use permits or licenses—$50–$625.

(3) Actions taken to approve plans for fills or structures constructed either without prior approval by TVA under Section 26a of the TVA Act or not in accordance with such plans previously approved by TVA, and other actions, where appropriate, to suffer the presence of such fills or structures or to reach other agreements with respect to such fills or structures—$100–$2,500.

(4) Abandonment of transmission line easements and rights of way—$100–$1,500.

(b) *Basis of charge.* The administrative charge assessed by the responsible land manager shall, to the extent applicable, include the following costs:

(1) Appraisal of the land or landrights affected;

(2) Assessing applicable rental fees;

(3) Field inspections and investigations;

(4) Title and record searches;

(5) Preparation for conducting public auction and negotiated sales;

(6) Mapping and surveying;

(7) Preparation of conveyance instrument, permit, or other authorization or approval instrument;

(8) Coordination of the proposed action within TVA and with other Federal, State, and local agencies;

(9) Legal review; and

(10) Administrative overheads associated with the transaction.

(c) *Assessment of charge when actual administrative costs significantly exceed established range.* When the responsible land manager determines that the actual administrative costs are expected to significantly exceed the range of costs established in paragraph (a) of this section, such manager shall not proceed with the TVA action until agreement is reached on payment of a charge calculated to cover TVA's actual administrative costs.

(d) *Additional charges.* In addition to the charges assessed under these regulations, TVA may charge for its services if TVA is required to make environmental investigations or otherwise incur additional expenses as provided in section 5.7.2 of TVA's procedures implementing the National Environmental Policy Act (45 FR 54,511–15).

W. F. Willis,

General Manager.

April 12, 1983.

[FR Doc. 83-10203 Filed 4-18-83; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Furosemide Tablets

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 Bolar Pharmaceutical Co., Inc., providing for safe and effective use of furosemide tablets for oral treatment of dogs for edema associated with cardiac insufficiency and acute noninflammatory tissue edema.

EFFECTIVE DATE: April 19, 1983.

FOR FURTHER INFORMATION CONTACT: Bob G. Griffith, Bureau of Veterinary Medicine (HFV–112), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3430.

SUPPLEMENTARY INFORMATION: Bolar Pharmaceutical Co., Inc., 130 Lincoln St., Copiague, NY 11726, filed NADA 125–329 providing for use of 12.5 and 50 milligram furosemide tablets for oral treatment of dogs for edema (pulmonary congestion, ascites) associated with cardiac insufficiency and acute noninflammatory tissue edema.

The sponsor of this NADA submitted studies to demonstrate that the drug is safe and effective for its intended uses. 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 520

Animal drugs, oral.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

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 520 is amended in § 520.1010a by revising paragraph (b), to read as follows:

§ 520.1010a Furosemide tablets or boluses.

* * * * *

(b) *Sponsor.* See No. 012799 in § 510.600(c) of this chapter for use in dogs, cats, and cattle; see No. 000725 and 013983 in § 510.600(c) of this chapter for use in dogs.

* * * * *

Effective date. April 18, 1983.

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

Dated: April 8, 1983.

Gerald B. Guest,

Acting Director, Bureau of Veterinary Medicine.

[FR Doc. 83-10160 Filed 4-18-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 211 and 700

[Docket No. 82N–0330]

Tamper-Resistant Packaging Requirements for Certain Over-the-Counter Human Drug and Cosmetic Products

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its tamper-resistant packaging regulations for over-the-counter (OTC) drug and cosmetic products to clarify certain sections of the preamble and to specify in the regulations those products that the agency has exempted from these regulations. This action is taken in response to comments received on the final rule and to citizens' petitions seeking exemptions from the final rule.

EFFECTIVE DATE: April 19, 1983.

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SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 5, 1982 (47 FR 50442), FDA published regulations (corrected in the **Federal Register** of January 14, 1983; 48 FR 1706) establishing tamper-resistant packaging and labeling requirements for certain OTC human drug and cosmetic products in response to seven deaths linked to Extra-Strength Tylenol capsules found to be contaminated with cyanide and to other tampering incidents nationwide. This action was taken to provide safeguards against the future occurrence of such incidents. The OTC drug products covered by these regulations include oral drug products (except dentifrices) and nasal, otic, ophthalmic, rectal, and vaginal drug products. Cosmetic products covered by these regulations are liquids that are used orally, such as mouthwashes, gargles, breath fresheners, etc., and vaginal cosmetic products. The regulations require that the packaging of these products be capable of providing consumers with visible evidence if package tampering has occurred. In addition, the final rule requires the labeling of the affected products to bear a statement describing the tamper-resistant feature of the package.

Compliance with these regulations becomes effective in steps. The requirements that a tamper-resistant package be used became effective February 7, 1983, for OTC drug products and cosmetics that are considered the most vulnerable to tampering. These products are oral, vaginal, and rectal drug products (other than oral and vaginal tablets and vaginal and rectal suppositories), otic drug products, nasal drug products, and ophthalmic drug products. A later effective date of May 5, 1983, is provided for oral and vaginal tablets and for vaginal and rectal suppositories because they are considered less susceptible to known methods of tampering. For all products, the label statement requirement and the requirement that the barrier to entry be distinctive are effective May 5, 1983. The agency also established a retail level effective date of February 6, 1984, by which time all stocks held for retail sale (including stocks in retail stores), no matter when packaged, must be in compliance with the tamper-resistant packaging requirements of the regulations.

As discussed in the preamble to the final rule, the agency recognizes that certain packaging or marketing practices for some products or classes of products may already provide adequate protection for consumers. For such instances, the agency established in the regulations (§§ 211.132(d) and 700.25(d) (21 CFR 211.132(d) and 21 CFR 700.25(d))) a procedure whereby a manufacturer or packer may request an exemption from the tamper-resistant packaging requirements or the labeling requirements, or both. The agency further set forth the procedure for manufacturers who are unable to meet the effective date provisions to request a stay of the effective date.

The final rule provided a 30-day comment period for interested persons to submit written comments on these regulations. Based on these comments and a further review of the regulations, the agency has decided that certain provisions of both the regulations and the preamble need clarification.

The agency received approximately 375 comments concerning the episodes of malicious tampering that occurred in Chicago and elsewhere in the nation. Of these comments, approximately 100 were directly in response to the final rule. The following is a summary of the substantive comments on the final rule and the agency's responses to them.

I. Concepts of Tamper Resistance

1. The agency received 18 comments, mainly from organizations of health care professionals and organized consumer groups, expressing concern that the tamper-resistant packaging would be too difficult for the elderly and the manually impaired to open. The comments stressed that, because the elderly are the largest group of consumers of OTC medications, the agency should have considered this segment of the population when preparing the final rule. Several of these comments suggested that either FDA or the Consumer Product Safety Commission (CPSC) should test packaging designs currently in use or as they are developed to determine whether the tamper-resistant products can be opened by this segment of the population. Most of the comments recommended that drug manufacturers and packagers should consider the following when designing tamper-resistant packaging:

a. Directions for opening the tamper-resistant package should be in large print, in contrasting colors, and placed on both sides of the product.

b. Tamper-resistant packaging should be clearly visible and should be manufactured in a color and design scheme that is distinct from the rest of the container.

c. Component parts of the tamper-resistant packaging that need to be manipulated to break the barrier should be clearly visible and easy to grasp.

d. There should be standards for minimum break strength so that persons with physical disabilities are able to open the packages.

e. There should be uniformity of tamper-resistant directions and mechanisms so that ability to open one type of tamper-resistant packaging increases the likelihood of being able to open other packaging of the same type.

The agency agrees that tamper-resistant packaging must be accessible to the elderly and the manually impaired. In the preamble to the final rule, FDA urged manufacturers devising new packaging to take the needs of this segment of the population into account. The agency is concerned, however, that many of these comments misunderstand the concept of tamper-resistance, apparently based on a belief that a product cannot be resistant to tampering, unless it requires extra strength or dexterity to open it. This is not the case and was not the agency's intent in using the term "tamper-resistant." In fact, a packaging system that may be very easy to open, such as one using a pull tab or a fragile paper seal over the mouth of a container, may still be tamper-resistant because it would be obvious to the consumer if the package had been opened.

Since the publication of the final rule, the agency has met with officials of CPSC and, in conjunction with CPSC, is planning to study whether opening tamper-resistant packaging presents problems for the elderly or the manually impaired. The agency has developed a draft protocol for a study that is being reviewed by several consumer groups and health care organizations. In addition, on January 3, 1983, the agency met with representatives of consumer groups and various health organizations to hear their views on this issue and on January 31, 1982, the agency held a meeting for these organizations to present their views to industry representatives.

2. One trade association and two firms involved in the packaging of OTC drug products criticized the use of the term "tamper resistant," stating that it is unclear and confusing. Two of these comments argued that the term "tamper indicating" would be more appropriate than "tamper resistant," while the other comment argued that the term "tamper control packaging" would be more appropriate. Several other comments suggested the use of the term "tamper evident."

The agency understands the concern voiced by these comments but believes the term "tamper-resistant" packaging is more appropriate than any of the three suggested alternative terms. Although most of the technologies discussed in the preamble to the final rule are systems that can be expected to provide visible evidence to consumers if tampering has occurred, this is not the case with every system. For example, aerosol containers are always tamper-resistant but not always tamper-evident. Therefore, because the agency contends that tamper-resistant packaging is a term encompassing a greater number of possible technologies that would resist tampering, the agency does not plan to amend the regulations to change the terminology.

3. Several comments from a trade association and producers of packaging systems stated that some of the definitions of packaging technologies used in the preamble are inaccurate and misleading. These comments claimed that FDA's use of these terms is inconsistent with industry practice and argued that the agency should revise them.

The agency agrees that there are various ways of defining some of the packaging technologies listed in the preamble. The definitions used, however, were submitted by the Proprietary Association and are basically the same as those contained in the *Glossary of Packaging Terms* that was compiled and published by both The Packaging Institute, U.S.A., and the Packaging Machinery Manufacturers Institute and accepted by the American National Standards Institute. Although the definitions selected differ from those suggested by the comments, the agency believes that the terms, as currently defined in the preamble, are widely used in, and understood by, the manufacturing industry. Furthermore, the agency points out that the packaging systems listed in the preamble are included there as examples only and not as regulatory requirements. Thus, how a type of packaging is described in the preamble has no bearing on compliance with the regulations, which set forth performance criteria to be met.

4. Several designers and manufacturers of packaging systems and individual consumers claimed to have devised new methods of packaging that were "tamper-proof" or "tamper-resistant." Many of these comments requested that their packaging systems be included in the FDA list of acceptable technologies in the final rule (47 FR 50444). These comments contended that their packaging systems would be recognized as acceptable by industry only if included in FDA's list of acceptable tamper-resistant packaging. The agency also received two comments from manufacturers of drug packaging systems claiming that their systems are tamper-resistant by design and thus, like aerosol containers, should be cited as such in the preamble.

The agency emphasizes, as it did in the preamble to the final rule, that the list of current technologies was never intended to be complete, but was intended only to provide examples of currently available packaging systems capable of meeting the tamper-resistant requirements of the final rule. The agency reemphasizes that it does not intend to preclude technological innovation that may create totally different systems for providing consumers with protection against product tampering. As was expected, since the publication of the final rule, the agency has become aware of numerous other available tamper-resistant packaging options. The agency again states that manufacturers and packagers are free to adopt any packaging system, whether or not listed in the preamble to the final rule, if it is tamper-resistant. The examples given in the preamble to the final rule have no special status.

Furthermore, the agency points out that the use of a technology listed in the preamble does not, by itself, constitute compliance with the requirement for the use of a tamper-resistant packaging system, because the performance characteristics of some technologies vary widely. For instance, although shrink seals are listed as a technology capable of meeting the tamper-resistant packaging requirement of the final rule, the agency does not believe the cellulose wet shrink seal, as currently manufactured, will meet the requirements of the regulations. The agency believes, however, that the heat shrink band does meet these requirements. The agency considers cellulose seals to be unacceptable because of the widespread knowledge, even among people outside of the packaging industry, that the currently available cellulose wet band can be removed and reapplied without evidence of tampering. The process for removing the heat shrink band, however, is not well know to the public and could not be accomplished by someone unfamiliar with commercial packaging techniques. The agency points out that at least one manufacturer of wet shrink bands is investigating ways to improve the characteristics of the bands so that they will meet the requirements of the regulations.

In addition, the agency will use its regulatory discretion in evaluating the compliance of firms. If a firm has made a good-faith effort to comply with the effective dates but has used a technology that is not completely satisfactory, the agency does not intend to take regulatory action until the firm has been duly notified and been given a reasonable time to correct any deficiencies.

5. Many comments from consumers commended the agency's immediate response to a serious public health problem, but thought that the final regulations should have covered additional products, pointing out that there have already been several cases of tampering involving food products. A pharmacist thought the final regulations also should have covered prescription drug products.

The agency has considered the possibility of extending tamper-resistant packaging and labeling requirements to other products generally, but believes at this time the scope of the current regulations should not be broadened. In regard to prescription drug products, FDA believes that tamper-resistant packaging is unnecessary. The objective of the regulation is to prevent the malicious tampering that can occur when products are accessible to the public. Because prescription drug products are under the control of a health professional upon receipt at a retail establishment, they are not accessible to the public before they are dispensed. Tampering with such products, therefore, seems a remote possibility.

6. Another comment asserted that the agency failed to state the reason for exempting both dentifrices and insulin products from the tamper-resistant packaging and labeling regulations. The comment suggested that, to avoid public confusion, any products exempted from the packaging requirements should be required to bear a statement to that effect.

As stated in the preamble, the agency did not include dentifrices and insulin in the final rule because tampering with them is less probable. Also, the consequences of tampering with dentifrices are less severe than with those products that are ingested, inserted, inhaled, or intended for ophthalmic use. Furthermore, insulin is usually kept behind the pharmacy counter in a refrigerator and is packaged in a multiple-dose vial that is already tamper-resistant.

The agency believes it is unnecessary and would be unduly burdensome to manufacturers and packagers to require them to place a statement on their product labels merely because they are exempt from these regulations. The public will, through direct observation of products on the market, be able to ascertain which are subject to the regulations and which are not.

II. Provisions of the Rule

7. Comments from drug manufacturers and trade associations criticized FDA for using the terms "distinctive by design" and "identifying characterisitc" without defining them. These comments stressed that both of these terms have varying possible interpretations and are causing confusion among manufacturers and packagers.

The agency agrees that it should clarify these terms. Under §§ 211.132(b) and 700.25(b) of the final rule, the agency defines a tamper-resistant package as one having an indicator or barrier to entry, which, if breached or missing, can reasonable be expected to provide visible evidence to consumers that tampering has occurred. The rule further states that "to prevent the substitution of the tamper-resistant feature after tampering, the indicator or barrier to entry is required to be distinctive by design or by the use of an identifying characteristic." Although the agency did not define the term "distinctive by design," it stated clearly in the preamble to the final rule that a tamper-resistant feature designed from material that is generally "not readily available" is "distinctive by design." By not readily available, the agency means materials that are not generally available for purchase by consumers at a variety of retail stores. Most packaging materials are generally available only in very large quantities and are sold primarily to manufacturers and packagers. Packaging systems, therefore, which use materials such as bubble packs, aerosol containers, or individual foil pouches, which are not readily available to the public and which would not be easy to duplicate, are considered distinctive by design and do not require an identifying characteristic. So as to clarify this point further, however, the agency has amended the regulations to define "distinctive by design" as meaning that "the packaging cannot be duplicated with commonly available materials or through commonly available processes."

Materials such as plain tape, clear plastic, or paper seals are obviously readily available to those who might tamper with products. Therefore, for barriers using these materials, the agency is requiring that an identifying characteristic be placed on them so that the substitution of a plain tape, clear plastic, or paper seal can be easily detected. The preamble to the final rule (47 FR 50444) listed 4 packaging systems, among the 11 cited, that would require an identifying characteristic.

The agency intentionally did not give specific examples of identifying characteristics so as to allow manufacturers and packagers flexibility in designing their tamper-resistant features. To clarify the regulations, however, the agency has added examples of kinds of identifying characteristics that would comply with this requirement. Although the agency realizes that many manufacturers and packagers are planning to imprint their company logo on their tamper-resistant feature to distinguish it from other designs, an individual specific identifying characteristic is not required. In fact, several manufacturers may use packaging technologies with the same identifying characteristic. The agency does not believe that such multiple use will cause a problem, because manufacturers will closely control their supplies of these imprinted packaging systems to be certain they are not generally available to the public.

8. Another comment questioned the assumption contained in §§ 211.132(b) and 700.25(b) that an indicator or barrier

to entry that is distinctive by design or has an identifying characteristic will "prevent the substitution of the tamper-resistant feature after tampering." The comment argued that tamper-resistant packaging cannot "prevent" the substitution of a tamper-resistant feature after tampering, but can only reduce its likelihood. The comment further suggested that for clarification the regulations should specifically include the concept that commonly available processes or materials would not be distinctive by design.

The agency agrees with this comment and has revised §§ 211.132(b) and 700.25(b) accordingly.

9. The agency has also received several comments from manufacturers and packagers questioning the requirement contained in §§ 211.132(c) and 700.25(c) that the labeling statement must be "prominently placed so that consumers are alerted to the specific tamper-resistant feature of the package." The comments asked whether this requirement means that the manufacturer or packager must describe specifically the tamper-resistant feature and its position on the package.

The agency believes that the labeling statement should identify the place on the package that has the tamper-resistant feature, and, where a packaging feature incorporates an identifying characteristic, that characteristic should be referred to in the labeling statement. For example, the labeling statement on a container with a shrink band that has a logo could say "For your protection, this bottle has an imprinted seal around the neck." The regulations have been amended to clarify this point.

10. One comment expressed the view that for any tamper-resistant packaging to be truly effective, visual indication of package integrity must be apparent at the point of retail purchase. The comment contended that, under the current regulations, consumers would be required to open some packages to discover evidence of tampering.

The agency agrees that some, but not all, of the currently acceptable tamper-resistant packaging technologies require that an outer container closure be opened before the tamper-resistant feature is evident to consumers. However, the agency disagrees that point-of-purchase evidence of tampering is necessary for the tamper-resistant packaging to be effective. The agency considered imposing a point-of-purchase requirement when the regulations were written and rejected such a requirement for several reasons. First, such a requirement would severely limit the numbers and kinds of packaging technology that could be employed to fulfill the function of tamper-resistant packaging. Thus, such a requirement would increase the costs of complying with the regulations and undermine significantly the ability of packagers to comply within the short timeframes dictated by the risk of tampering episodes and by public's concern. In addition, the agency believes that, for affected products, consumers will come to expect tamper-resistant packaging as a matter of course and will not feel compelled to open packages while in the store. In the rare instances in which tampering or mishandling has compromised the tamper-resistant feature, the consumer will not be greatly inconvenienced by having to return the product to the store after having taken it home. Such an occasional inconvenience to consumers cannot justify imposing a requirement of point-of-purchase tamper-resistant packaging on all affected products, with the resultant additional cost to consumers, and the additional delay before packaging could be in full compliance with the regulations. Further, the agency notes that a number of the more popular tamper-resistant packaging technologies already provide point-of-purchase evidence of tampering.

11. Several comments asserted that there is an inconsistency between a statement in the preamble and a provision in the regulations. The preamble states at 47 FR 50445 that the labeling of products affected by this regulation must "contain a statement describing the tamper-resistant feature of the package and advising consumers that, if the feature is breached or missing when the product is purchased, tampering may have occurred." The regulations, however, state only that the labeling must alert the consumer to the specific tamper-resistant feature of the package.

The agency agrees that this point needs clarification, and although the agency strongly urges manufacturers to use a labeling statement that informs consumers not to purchase products if the tamper-resistant feature is breached or missing, it is not requiring such a statement on the labeling.

12. The agency received several comments suggesting that the term "retail sale" as used in the regulations should be defined. In addition, several requests for exemptions concerned products that are distributed in a manner in which the public has no access to them while they are held for sale. These requests asked that the following categories of drug products be exempted from the regulation: (1) OTC drug products that are controlled drugs and are required to be dispensed by a pharmacist; (2) OTC human drug and cosmetic products distributed directly to hospitals, nursing homes, and health care clinics; (3) first-aid kits containing OTC human drug products sold directly to industrial users; (4) OTC human drug products sold directly to physicians or dentists for subsequent distribution to patients; and (5) products sold to pharmacists that are maintained under the pharmacists' control. Other comments questioned whether OTC products sold in vending machines, through the mail, or sold door-to-door would require tamper-resistant packaging.

The agency agrees that the term "retail sale," for purposes of these regulations, should be clarified and defined and that those products not held for "retail sale," as defined, should not be subject to the tamper-resistant packaging and labeling regulations. The purpose of the regulations is to reduce the risk of malicious tampering with OTC drug products for retail sale and related cosmetic products for retail sale by requiring that their packaging have a distinctive indicator or barrier to entry that would provide the consumer with visible evidence that the package has been tampered with or opened. Malicious tampering has occurred with products that were accessible to the public, generally on a shelf in a retail establishment before purchase by the ultimate consumer. Prescription drugs were not included in the regulations because they are maintained under a pharmacist's control and are not accessible to the public before they are dispensed. For the same reason, the agency has concluded that those OTC human drug and cosmetic products that are distributed in a manner that does not afford the public access to them while they are held for sale were never intended to come within the scope of these regulations. Such restricted or controlled distribution does not constitute "retail sale" as that term is used in these regulations. Thus, the agency interprets "held for retail sale" under these regulations more narrowly than it interprets "held for sale" in enforcement actions under sections 301 through 304 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331 through 334).

In view of this interpretation of "retail sale," OTC drug products sold directly to a hospital, an institution, a medical or first aid unit, or a health professional for dispensing directly to patients need not be packaged or labeled as required by the tamper-resistant regulations. Likewise, the agency has concluded that

first-aid kits that are sold directly to organizations and that are not accessible to the general public are not held for "retail sale" for purposes of these regulations. Also, products sold in vending machines or through the mail directly from a firm representative to an individual user, as well as products sold in the same manner but door-to-door, are not considered held for "retail sale." Of course, if any of these products were in fact held for retail sale in a retail establishment where the public would have access to them, they would be subject to regulatory action if they were not in compliance with applicable tamper-resistant packaging and labeling requirements of the regulations.

13. Two consumers questioned the agency's policy of allowing plastic bottles to be used in tamper-resistant systems. They argued that a tamperer could easily inject a substance into a plastic bottle without visible evidence of tampering.

The agency does not agree with this argument. Although it may be possible to penetrate some plastic containers with a needle, the agency believes that most plastic containers are sufficiently strong that either a needle will not penetrate the container, or such a large needle would have to be used that the hole would not be resealed. In an event, most plastic containers would be tamper-evident under these conditions. A liquid injected into a plastic container of tablets or capsules would result in obvious damage to the contents, and, were a liquid injected into a liquid drug or cosmetic product, the hole in the bottle would result in leakage.

14. Two comments questioned the agency's timetable for implementing the packaging requirement. Specifically, these comments criticized the retail level effective date of February 6, 1984, as too late and therefore not responsive to the urgent need to respond to the tampering problem. One such comment contended that the 1984 compliance date for shelf drugs was not instituted to protect the public, but rather to minimize the losses to the drug industry.

The agency disagrees with these comments and believes that the sequential effective dates established by these regulations are both reasonable and responsive to the urgent need to protect the public against the tampering problem. It must be kept in mind that the regulations required that by February 7, 1983, tamper-resistant packaging must be used in the manufacturing of those OTC drug products and cosmetics most vulnerable to tampering (oral liquids and capsules). By May 5, 1983, tamper-resistant packaging must be used in the manufacture of all other products subject to these regulations. In view of these two effective dates, which apply when the affected products are packaged, the agency believes that by the retail level effective date of February 6, 1984, the stock of products in non-tamper-resistant packaging will be significantly depleted.

The agency agrees that, under normal circumstances, substantial stocks of products with old packaging might remain on retail shelves by the February 6, 1984, date. However, because of consumers' extraordinary awareness of the tampering problem, and their strong demand for tamper-resistant packaging, the agency believes that manufacturers and retailers will attempt to replace old stocks with products in tamper-resistant packaging as soon as they become available. Setting an earlier date by which replacement of stocks is required, however, might create shortages of needed OTC drugs and, as a result, greatly increased prices. FDA believes it is appropriate to rely on the manufacturing effective dates and let the forces of the marketplace encourage the replacement of shelf stocks, with a February 6, 1984, date as a final regulatory target for completing that process. Further, as stated in the preamble to the regulations, because the agency is uncertain as to the circumstances that will prevail at the time of the retail level effective date, the agency plans to review the need for such a date and whether the date should be changed based on an assessment of the situation when more information is available.

III. Legal Authority

15. Two comments asserted that FDA lacks the legal authority to set an effective date after which all products that are subject to these regulations and that are on retail shelves must be in compliance with the tamper-resistant packaging requirements. These comments argued that FDA lacked authority on two grounds: (1) to set such a date was to enact an *ex post facto* requirement, and (2) based on the decision of the court in *United States* v. *An Article of Drug * * * White Quadrisect*, 484 F.2d 748 (7th Cir. 1973), products produced in accordance with current good manufacturing practice could not be proceeded against after shipment for failure to follow safety practices that were not recognized prior to the production of the products.

The agency does not agree, on either ground, that it lacks the legal authority to set a retail level effective date. The constitutional prohibition against *ex post facto* application of the law relates only to criminal penalties, not to civil legislation or regulation. See *Harisiades* v. *Shaughnessy*, 342 U.S. 580, 594–595 (1952); *Agustin* v. *Quern*, 461 F. Supp. 441, 443 (N.D. Ill. 1978); aff'd 611 F.2d 206 (7th Cir. 1979); *United States* v. *An Article of Food * * * Swordfish*, 395 F. Supp. 1184, 1187 (S.D.N.Y. 1975); *United States* v. *Great Atlantic and Pacific Tea Co.*, 342 F. Supp. 272, 281 (D. Md. 1972). *Cf. Springdale Convalescent Center* v. *Mathews*, 545 F.2d 943, 955 (5th Cir. 1977) (regulation attaching new legal obligations to completed transaction will be upheld where court finds a rational basis). Because the provisions challenged here are regulatory and not necessarily penal in nature, the *ex post facto* prohibition does not apply. *United States* v. *An Article of Food * * * Swordfish, supra*, at 1187.

The agency also does not agree that the *dicta* quoted from the *White Quadrisect* case, *supra*, compels the result asserted. The court in *White Quadrisect* was not faced with a situation analogous to that faced here by FDA. Here, the agency has responded to a problem not previously foreseen and has set forth a reasonable timetable during which affected manufacturers may achieve compliance. The court in *White Quadrisect* was faced with a challenge to the current good manufacturing practice regulations based on the argument that the regulations were void because they were too vague. The court rejected the challenge, finding, among other things, that the term "current" fixes the point in time when the acceptability of the relevant production practices may be determined. *White Quadrisect, supra*, at 749. Here, the date fixed for total compliance is more than 1 year from the date the regulation was published, and the agency believes that such a date is both reasonable and legally supportable. As noted in the preamble to the final regulations (47 FR 50446), the agency has promised to review the need for such an effective date after there has been an opportunity to determine the effects of the regulations on the marketplace (*id.*).

The argument based on the *White Quadrisect* case also ignores the fact that the tamper-resistant packaging requirements are not based solely on the current good manufacturing practice provisions contained in 21 U.S.C. 351(a)(2)(B). As discussed in the preamble to the regulations, the provisions are also based on other provisions of the act that relate to the adulteration of the affected OTC products.

The agency again points out that the purpose of the retail level effective date requirements of the regulations is to

assure that, at a defined time, all products covered by the rule will be contained in tamper-resistant packaging. Although the agency is sympathetic to the fact that the effective date requirements may impose some difficulties on manufacturers, the agency believes that in providing more than 1 year in which to comply, it has acted both reasonably and responsibly. Further, the agency has provided in §§ 211.132(d) and 700.25(d) a mechanism whereby any manufacturer or packer who can demonstrate a need for an exemption or stay from the packaging or labeling requirements can obtain one.

A final retail level effective date is, nonetheless, necessary and within the agency's authority to require. The date, therefore, remains February 6, 1984. Should the agency's review of the effects of the regulations on the marketplace indicate that a different date would be more appropriate, FDA will publish amended regulation in the Federal Register.

16. Two consumers suggested that the agency should use its authority to make tampering with drug products a crime punishable by death. If this were the case, the comments argued, drug product tampering would cease.

The provisions of the Federal Food, Drug, and Cosmetic Act do not provide the agency with the authority to make tampering with drug products a crime punishable by death. Legislation that would make the tampering with food, drug, cosmetic, and other products with intent to cause personal injury, death, or harm a felony punishable by a sentence of up to life in prison passed both houses of Congress last year. This bill, HR 3963, was vetoed by the President, however, because of other provisions, unrelated to the tampering provisions, that were in the bill. Anti-tampering bills have been reintroduced into both houses of the 98th Congress and have been referred to the appropriate committees for consideration.

17. Two manufacturers of packaging believed that the agency should not have mentioned the costs of specific systems when discussing the cost range of the various packaging technologies. They stressed that mentioning only two such systems was misleading and that any reference to specific systems should be deleted.

The agency disagrees with this comment. In the preamble to the final rule, the agency attempted to give examples of the most and the least expensive packaging system known at the time. Such examples were necessary as part of the agency's estimation of the economic impact of the regulations and were not intended to reflect upon the merits of one system over another. Manufacturers and packagers consider a variety of factors in selecting packaging systems, including the suitability of their products, the availability of packaging supplies, and the design and capability of their existing production equipment. The agency does not believe that any manufacturer will select a packaging system based on the unit-cost data in FDA's economic analysis.

IV. Exemptions Granted

Section 211.132(d) and 700.25(d) of the tamper-resistant packaging and labeling regulations set forth a procedure whereby a manufacturer or packer may request an exemption from the labeling and packaging requirements of the regulations. In response to this provision, the agency has received many petitions requesting that various OTC human drug and cosmetic products be exempted from these regulations.

In the Federal Register of February 25, 1983 (48 FR 8137), the agency announced the availability of the agency's responses to these requests for exemptions. The exemptions are now being incorporated into the regulations.

A. Lozenges

1. One petition was received requesting that lozenges be exempt from the labeling provisions of the regulations.

After considering this request, the agency concluded that all lozenges (i.e., candy-like solids containing a medicinal agent in a suitably flavored base) should be exempted from both the packaging and labeling requirements of the tamper-resistant packaging regulations. The likelihood of successful tampering with lozenges is remote. The lozenges flavored base may be a hard sugar candy, glycerinated gelatin, or a combination of sugar with sufficient mucilage to give it form. Because lozenges are generally distinctive in appearance, the successful substitution of another product would be unlikely. Lozenges are placed in the mouth where they dissolve, liberating the active ingredient. In addition, the agency believes that it would be extremely difficult to counterfeit or tamper with such a dosage form, and that if physical tampering were attempted, it would be readily visually detectable.

B. Ammonia Inhalant Ampules

2. One petition was received requesting that an alcoholic ammonia solution in a crushable glass ampule be exempt from the labeling requirements of the regulations.

The agency granted this exemption because any malicious tampering with such a product would not only be evident, but would also release the ammonia, precluding any further use.

C. Aerosol Products and Compressed Medical Oxygen

3. Although the agency did not receive any petitions requesting that aerosol containers be exempted from the labeling requirements, it did receive three such comments from manufacturers and packagers of OTC drug products urging the agency to amend the labeling requirements under §§ 211.132(c) and 700.25(c) to exclude aerosol containers. In addition, a distributor of compressed medical oxygen requested an exemption from the labeling requirements.

The agency concluded that aerosol OTC human drug and cosmetic products and compressed medical oxygen should be exempt from the labeling requirements of the tamper-resistant regulations. The reason for these exemptions is that such containers are tamper-resistant but are not always "tamper evident," so that in the unlikely event that someone had tampered with the contents of an aerosol container or a container of medical oxygen, a labeling statement could not inform the consumer how to detect the occurrence of tampering. For purposes of this exemption, the term "aerosol" product means a product that depends upon the power of a liquified or compressed gas to expel the contents from the container.

D. One-Piece Soft Gelatin Capsules

4. In the Federal Register of January 4, 1983 (48 FR 334), the agency announced its advisory opinion that OTC drugs in one-piece soft gelatin capsules belong to the category of products that must comply with the regulations by May 5, 1983. That opinion and the ones set forth in the Federal Register notice of February 25, 1983 (48 FR 8137) and in this document constitute all the exemptions granted to date from the tamper-resistant packaging and labeling regulations.

V. Economic Considerations

In the preamble to the November 5, 1982 final rule, the agency discussed the economic considerations of the rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (47 FR 50449). The agency concluded that the costs of conversion to tamper-resistant packaging would not be sufficient to warrant designation of the rule as a major rule under Executive Order 12291 and, further, certified under the Regulatory Flexibility Act that the rule will not have a significant economic

impact on a substantial number of small entities.

These amendments to the final rule are for clarification. The agency finds that the regulatory impacts previously considered are not changed to any measurable degree and, accordingly, reexamination of the economic impacts under Executive Order 12291 and the Regulatory Flexibility Act is not necessary.

VI. Environmental Impact

The agency has determined pursuant to 21 CFR 25.24(d) (12) and (13) (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

21 CFR Part 211

Drugs, manufacturing, Labeling, Laboratories, Packaging and containers, Warehouses.

21 CFR Part 700

Cosmetics, Definitions, Prohibited cosmetic ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 501, 502, 505, 506, 507, 601, 602, 701, 52 Stat. 1041 as amended, 1049–1056 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 321(n), 351, 352, 355, 356, 357, 361, 362, 371)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 211 and 700 are amended as follows:

PART 211—CURRENT GOOD MANUFACTURING PRACTICE FOR FINISHED PHARMACEUTICALS

1. Part 211 is amended in § 211.132 by revising paragraphs (a), (b), and (c), by revising the introductory text of paragraph (g), and by revising paragraph (g)(1), to read as follows:

§ 211.132 Tamper-resistant packaging requirements for over-the-counter human drug products.

(a) *General.* Because most over-the-counter (OTC) human drug products are not now packaged in tamper-resistant retail packages, there is the opportunity for the malicious adulteration of OTC drug products with health risks to individuals who unknowingly purchase adulterated products and with loss of consumer confidence in the security of OTC drug product packages. The Food and Drug Administration has the authority and responsibility under the Federal Food, Drug, and Cosmetic Act (the act) to establish a uniform national requirement for tamper-resistant packaging of OTC drug products that will improve the security of OTC drug packaging and help assure the safety and effectiveness of OTC drug products. An OTC drug product (except a dermatological, dentifrice, insulin, or lozenge product) for retail sale that is not packaged in a tamper-resistant package or that is not properly labeled under this section is adulterated under section 501 of the act or misbranded under section 502 of the act, or both.

(b) *Requirement for tamper-resistant package.* Each manufacturer and packer who packages an OTC drug product (except a dermatological dentifrice, insulin, or lozenge product) for retail sale, shall package the product in a tamper-resistant package, if this product is accessible to the public while held for sale. A temper-resistant package is one having an indicator or barrier to entry which, if breached or missing, can reasonably be expected to provide visible evidence to consumers that tampering has occurred. To reduce the likelihood of substitution of a tamper-resistant feature after tampering, the indicator or barrier to entry is required to be distinctive by design (e.g., an aerosol product container) or by the use of an identifying characteristic (e.g., a pattern, name, registered trademark, logo, or picture). For purposes of this section, the term "distinctive by design" means the packaging cannot be duplicated with commonly available materials or through commonly available processes. For purposes of this section, the term "aerosol product" means a product which depends upon the power of a liquified or compressed gas to expel the contents from the container. A tamper-resistant package may involve an immediate-container and closure system or secondary-container or carton system or any combination of systems intended to provide a visual indication of package integrity. The tamper-resistant feature shall be designed to and shall remain intact when handled in a reasonable manner during manufacture, distribution, and retail display.

(c) *Labeling.* Each retail package of an OTC drug product covered by this section, except ammonia inhalant in crushable glass ampules, aerosol products as defined in paragraph (b) of this section, or containers of compressed medical oxygen, is required to bear a statement that is prominently placed so that consumers are alerted to the specific tamper-resistant feature of the package. The labeling statement is also required to be so placed that it will be unaffected if the tamper-resistant feature of the package is breached or missing. If the tamper-resistant feature chosen to meet the requirement in paragraph (b) of this section is one that uses an identifying characteristic, that characteristic is required to be referred to in the labeling statement. For example, the labeling statement on a bottle with a shrink band could say "For your protection, this bottle has an imprinted seal around the neck."

* * * * *

(g) *Effective date.* OTC drug products, except dermatological, dentifrice, insulin, and lozenge products, are required to comply with the requirements of this section on the dates listed below except to the extent that a product's manufacturer or packer has obtained an exemption from a packaging or labeling requirement.

(1) *Initial effective date for packaging requirements.* (i) The packaging requirement in paragraph (b) of this section is effective on February 7, 1983 for each affected OTC drug product (except oral and vaginal tablets, vaginal and rectal suppositories, and one-piece soft gelatin capsules) packaged for retail sale on or after that date, except for the requirement in paragraph (b) of this section for a distinctive indicator or barrier to entry.

(ii) The packaging requirement in paragraph (b) of this section is effective on May 5, 1983 for each OTC drug product that is an oral or vaginal tablet, a vaginal or rectal suppository, or one-piece soft gelatin capsules packaged for retail sale on or after that date.

* * * * *

PART 700—GENERAL

2. Part 700 is amended in § 700.25 by revising paragraphs (b) and (c), to read as follows:

§ 700.25 Tamper-resistant packaging requirements for cosmetic products.

* * * * *

(b) *Requirement for tamper-resistant package.* Each manufacturer and packer who packages a cosmetic liquid oral hygiene product or vaginal product for retail sale shall package the product in a tamper-resistant package, if this product is accessible to the public while held for sale. A tamper-resistant package is one having an indicator or barrier to entry which, if breached or missing, can reasonably be expected to provide visible evidence to consumers that tampering has occurred. To reduce the likelihood of substitution of a tamper-resistant feature after tampering, the indicator or barrier to entry is required

to be distinctive by design (e.g., an aerosol product container) or by the use of an identifying characteristic (e.g., a pattern, name, registered trademark, logo, or picture). For purposes of this section, the term "distinctive by design" means the packaging cannot be duplicated with commonly available materials or through commonly available processes. For purposes of this section, the term "aerosol product" means a product which depends upon the power of a liquified or compressed gas to expel the contents from the container. A tamper-resistant package may involve an immediate-container and closure system or secondary-container or carton system or any combination of systems intended to provide a visual indication of package integrity. The tamper-resistant feature shall be designed to and shall remain intact when handled in a reasonable manner during manufacture, distribution, and retail display.

(c) *Labeling.* Each retail package of a cosmetic product covered by this section, except aerosol products as defined in paragraph (b) of this section, is required to bear a statement that is prominently placed so that consumers are alerted to the specific tamper-resistant feature of the package. The labeling statement is also required to be so placed that it will be unaffected if the tamper-resistant feature of the package is breached or missing. If the tamper-resistant feature chosen to meet the requirement in paragraph (b) of this section is one that uses an identifying characteristic, that characteristic is required to be referred to in the labeling statement. For example, the labeling statement on a bottle with a shrink band could say "For your protection, this bottle has an imprinted seal around the neck."

* * * * *

EFFECTIVE DATE: April 19, 1983.

(Secs. 201(n), 501, 502, 505, 506, 507, 601, 602, 701, 52 Stat. 1041 as amended, 1049–1056 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 321(n), 351, 352, 355, 356, 357, 361, 362, 371))

Dated: March 17, 1983.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 83-10280 Filed 4-18-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Virginiamycin

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 Cadco, Inc., providing for use of a 50 percent virginiamycin premix to make a 2.2 percent (10 grams per pound) intermediate premix used to make complete swine feeds.

EFFECTIVE DATE: April 19, 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: Cadco, Inc., P.O. Box 3599, 10100 Douglas Ave., Des Moines, IA 50322, is sponsor of NADA 133–334 filed on its behalf by SimthKline Animal Health Products. The NADA provides for use of a 50-percent virginiamycin premix to make a 2.2-percent (10 grams per pound) intermediate premix used to make a complete swine feed. The feed is used as in § 558.635(f)(1)(iv) and (v) (21 CFR 558.635(f)(1)(iv) and (v)) for increased rate of weight gain and improved feed efficiency. The NADA is approved and § 558.635 is amended to reflect the approval.

Approval of this application is based on safety and effectiveness data contained in SmithKline's approved NADA's 91–467 and 91–513. SmithKline has authorized use of the data in its NADA's to support approval of this NADA. This approval does not change the approved use of the drug. Consequently, approval of this NADA poses no increased human risk of exposure to residues of the animal drug nor does it change the conditions of 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 is equivalent to a Category II supplemental approval which does not require reevaluation of the safety and effectiveness data in the parent NADA's 91–467 and 91–513.

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 Docket 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.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMALS 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), § 558.635 is amended by revising pargraph (b) to read as follows:

§ 558.635 Virginiamycin.

* * * * *

(b) *Approvals.* (1) Premix levels of 2.2 percent (10 grams per pound), 11 percent (50 grams per pound), and 50 percent (227 grams per pound) virginiamycin activity granted to No. 000007 in § 510.600(c) of this chapter for use as in paragraph (f) of this section.

(2) Premix level of 2.2 percent (10 grams per pound) virginiamycin activity granted to No. 011490 in § 510.600(c) of this chapter for use as in paragraph (f)(1)(iv) and (v) of this section.

* * * * *

Effective date. April 19, 1983.

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

Dated: April 13, 1983.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 83-10282 Filed 4-18-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 800

[Docket No. 82N-0332]

Tamper-Resistant Packaging Requirements for Contact Lens Solutions and Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its tamper-resistant packaging and labeling regulations for contact lens solutions and for tablets and other dosage forms used to make such solutions. The amendments clarify the regulation and conform it to amendments made elsewhere in this issue of the **Federal Register** to the tamper-resistant

packaging and labeling regulations for certain over-the-counter drugs and cosmetics.

EFFECTIVE DATE: April 19, 1983.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, National Center for Devices and Radiological Health (HFK-140), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7114.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 5, 1982 (47 FR 50452), FDA published a regulation (21 CFR 800.12) establishing tamper-resistant packaging and labeling requirements for solutions intended for use with contact lenses, e.g., for cleaning, disinfecting, wetting, lubricating, rinsing, soaking, or storing contact lenses, and for tablets to be used to make any such solution. FDA published corrections in the **Federal Register** of January 14, 1983 (48 FR 1706).

FDA received no comments on the tamper-resistant packaging and labeling regulation. The agency is, however, making the following changes in the regulation:

1. As in the regulations applicable to certain drugs and cosmetics, also amended in this issue of the **Federal Register**, FDA is clarifying that the tamper-resistant packaging and labeling requirements apply only to products that are accessible to the public while held for sale. Thus, contact lens products sold only through health professionals such as ophthalmologists and optometrists are not subject to these requirements.

2. As in the drug and cosmetic regulations, the agency is adding an explanation of the term "distinctive by design" and is giving examples of "an identifying characteristic." These terms are found in the requirement in § 800.12(b) that the required indicator or barrier to entry by "distinctive by design or by the use of an identifying characteristic."

3. As in the drug and cosmetic regulations, the agency is clarifying the requirement for labeling alerting consumers to the tamper-resistant feature of the package.

4. The agency also is applying the regulation to any dosage form used to make contact lens solutions (e.g., salt capsules), as well as to tablets, if the product is accessible to the public while held for sale. This amendment takes into account the possibility of new types of products to which the regulation might need to apply.

Accordingly, the regulation is amended as described above.

Interpretations of the tamper-resistant packaging and labeling regulations found in the preamble to the amendments that are being published to the regulations for certain over-the-counter drugs and cosmetics also apply to § 800.12.

In the preamble to the November 5, 1982 final rule, the agency discussed the economic considerations of the rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (47 FR 50454). The agency concluded that the costs of conversion to tamper-resistant packaging would not be sufficient to warrant designation of the rule as a major rule under Executive Order 12291 and, further, certified under the Regulatory Flexibility Act that the rule will not have a significant economic impact on a substantial number of small entities.

These amendments to the final rule are for clarification. The agency finds that the regulatory impacts previously considered are not changed to any measurable degree and, accordingly, reexamination of the economic impacts under Executive Order 12291 and the Regulatory Flexibility Act is not necessary.

The agency has determined pursuant to 21 CFR 25.24(d)(13) (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 800

Administrative practice and procedure, Medical devices.

PART 800—GENERAL

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(n), 501, 502, 515, 521, 701, 52 Stat. 1041 as amended, 1049-1051 as amended, 1055-1056 as amended, 90 Stat. 552-559, 574 (21 U.S.C. 321(n), 351, 352, 360e, 360k, 371)) and under the authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 800 is amended in § 800.12 by revising paragraphs (a), (b), and (c), to read as follows:

§ 800.12 Contact lens solutions and tablets; tamper-resistant packaging.

(a) *General.* Unless contact lens solutions used, for example, to clean, disinfect, wet, lubricate, rinse, soak, or store contact lenses and salt tablets or other dosage forms to be used to make any such solutions are packaged in tamper-resistant retail packages, there is the opportunity for the malicious adulteration of these products with risks both to individuals who unknowingly purchase adulterated products and with loss of consumer confidence in the security of the packages of over-the-counter (OTC) health care products. The Food and Drug Administration has the authority and responsibility under the Federal Food, Drug, and Cosmetic Act (the act) to establish a uniform national standard for tamper-resistant packaging of those OTC products vulnerable to malicious adulteration that will improve the security of OTC packaging and help assure the safety and effectiveness of the products contained therein. A contact lens solution or tablet or other dosage form to be used to make such a solution for retail sale that is not packaged in a tamper-resistant package and labeled in accordance with this section is adulterated under section 501 of the act or misbranded under section 502 of the act, or both.

(b) *Requirement for tamper-resistant package.* Each manufacturer and packer who packages for retail sale a product regulated as a medical device that is a solution intended for use with contact lenses, e.g., for cleaning, disinfecting, wetting, lubricating, rinsing, soaking, or storing contact lenses or tablets or other dosage forms to be used to make any such solution shall package the product in a tamper-resistant package, if this product is accessible to the public while held for sale. A tamper-resistant package is one having an indicator or barrier to entry which, if breached or missing, can reasonably be expected to provide visible evidence to consumers that tampering has occurred. To reduce the likelihood of substitution of a tamper-resistant feature after tampering, the indicator or barrier to entry is required to be distinctive by design or by the use of an identifying characteristic (e.g., a pattern, name, registered trademark, logo, or picture). For purposes of this section, the term "distinctive by design" means the package cannot be duplicated with commonly available material or through commonly available processes. A tamper-resistant package may involve an immediate-container and closure system or secondary-container or carton system or any combination of systems intended to provide a visual indication of package integrity. The tamper-resistant feature shall be designed to and shall remain intact when handled in a reasonable manner during manufacture, distribution, and retail display.

(c) *Labeling.* Each retail package of a product covered by this section is required to bear a statement that is prominently placed so that consumers are alerted to the tamper-resistant

feature of the package. The labeling statement is also required to be so placed that it will be unaffected if the tamper-resistant feature of the package is breached or missing. If the tamper-resistant feature chosen to meet the requirement in paragraph (b) of this section is one that uses an identifying characteristic, that characteristic is required to be referred to in the labeling statement. For example, the labeling statement on a bottle with a shrink band could say "For your protection, this bottle has an imprinted seal around the neck."

* * * * *

Effective date. April 19, 1983.

(Secs. 201(n), 501, 502, 515, 521, 701, 52 Stat. 1041 as amended, 1049–1051 as amended, 1055–1056 as amended, 90 Stat. 552–559, 574 (21 U.S.C. 321(n), 351, 352, 360e, 360k, 371))

Dated: March 17, 1983.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

[FR Doc. 83-10281 Filed 4-18-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 207, 213, 220, 221, 231, 234, 236, and 255

[Docket No. R-83-1081]

Mortgage and Loan Insurance Programs Under the National Housing Act; Multifamily Mortgage Insurance Program Amendments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for the several multifamily mortgage insurance programs to increase, from 90 percent to 140 percent, the maximum amount by which the Federal Housing Commissioner may, on a project-by-project basis, permit the mortgage amount limitations to be exceeded in high cost geographical areas, except for mortgages purchased or to be purchased by the Government National Mortgage Association under its special assistance functions. This rule brings the multifamily mortgage insurance regulations into conformity with certain amendments to the National Housing Act made by the Further Continuing Appropriations Act, 1983.

EFFECTIVE DATE: After expiration of the first period of 30 calendar days of continuous session of Congress following publication, subject to waiver, but not until the effective date that HUD will publish in a future issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Frank D. Brown, Office of Multifamily Housing Development, Room 6128, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone (202) 755–5720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Further Continuing Appropriations Act, 1983 amended Sections 207(c)(3), 213(b)(2), 220(d)(3)(B)(iii), 221(d)(3)(ii), 221(d)(4)(ii), 231(c)(2) and 234(e)(3) of the National Housing Act to increase the maximum amount by which the Secretary of HUD may, on a project-by-project basis, permit the mortgage amount limitations to be exceeded on certain types of multifamily mortgages in high cost geographical areas. The statutory change increased the present 90 percent maximum amount to 140 percent of the mortgage amount limitations for all multifamily mortgages insured under the affected mortgage insurance programs, except for mortgages subject to purchase by GNMA under its special assistance functions, as authorized by Section 305 of the National Housing Act. The present 90 percent maximum amount will continue to apply to these GNMA-assisted mortgages.

This final rule brings the multifamily mortgage insurance regulations contained in Subchapter B of Chapter II of Title 24, Code of Federal Regulations, into conformity with the amended statute by making parallel amendments to the following sections: 207.4, 207.32a, 207.33, 213.7, 220.507, 221.514, 231.6, 234.530, 236.12 and 255.211. Section 236.12 of the regulations is being amended, even though there was no amendment to Section 236 of the National Housing Act, since a mortgage may be insured under Section 236 if it meets the requirements of Section 221(d)(1) and (3), and Section 221(d)(3) was amended. Section 255.211 of the regulations is being amended since insurance under Part 255 is based on the authority provided in Section 207 of the National Housing Act, which was amended by the 1983 legislation.

As in the existing regulations, the authority to permit increases in mortgage amount limitations in high cost geographical areas is delegated to the Federal Housing Commissioner. Each HUD Area Office maintains a current list of the high cost geographical areas located within its jurisdiction.

Since these amendments merely follow the statutory changes and do not involve any exercise of discretion by the Secretary, the Secretary has found that it is unnecessary to publish a notice of proposed rulemaking and provide an opportunity for public comment on the amendments, and that there is good cause for adopting these amendments by means of a final rule. The Secretary has also determined that, for the reasons stated above, there is good cause for exempting this rule from the 30-day delay in effectiveness required by 5 U.S.C. 553(d).

However, section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)) provides for a delay in effectiveness of this rule for a period of 30 calendar days of continuous session of Congress after publication, unless waived by the Chairmen and Ranking Minority Members of the Senate Committee on Banking, Housing and Urban Affairs, and the House Committee on Banking, Finance and Urban Affairs.

The Secretary has requested the appropriate waivers by the Chairmen and Ranking Minority Members but, at the time of publication of this final rule, it is not known whether or when such waivers will be granted. Therefore, notice of the effective date of this final rule will be published in a future issue of the **Federal Register.**

HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusion set forth in paragraph (1) of § 50.20, the preparation of an Environmental Impact Statement or a Finding of No Significant Impact is not required for this rule.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100,000,000 or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based

enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. While this rule will permit increased mortgage amounts on insured mortgages and thereby have an impact on multifamily housing mortgagors, some of whom may constitute small entities, it will not affect a substantial number of such small entities, nor will the rule constitute a burden on small entities.

This rule is not listed in the Department's Semiannual Agenda of Regulations published on October 28, 1982 (47 FR 48422) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The programs affected by these amendments are listed in the Catalog of Federal Domestic Assistance under the following program numbers and titles:

14.112—Mortgage Insurance—Construction or Substantial Rehabilitation of Condominium Projects (section 234)
14.124—Mortgage Insurance—Investor Sponsored Cooperative Housing (section 213)
14.126—Mortgage Insurance—Management Type Cooperative Projects (section 213)
14.127—Mortgage Insurance—Manufactured Home Parks (section 207)
14.134—Mortgage Insurance—Rental housing (section 207)
14.135—Mortgage Insurance—Rental Housing for Moderate Income Families (section 221(d)(4))
14.137—Mortgage Insurance—Rental and Cooperative Housing for Low and Moderate Income Families, Market Interest Rate (section 221(d)(3))
14.138—Mortgage Insurance—Rental Housing for the Elderly (section 231)
14.139—Mortgage Insurance—Rental Housing in Urban Renewal Areas (section 220)
14.155—Mortgage Insurance for the Purchase or Refinancing of Existing Multifamily Housing Projects (section 223(f), Pursuant to section 207)

List of Subjects

24 CFR Part 207

Mortgage insurance, Rental housing, Mobile home parks.

24 CFR Part 213

Mortgage insurance, Cooperatives.

24 CFR Part 220

Home improvements, Mortgage insurance, Urban renewal, Projects, Rental housing, Loan programs—housing and community development.

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Displaced families, Single family housing, Projects, Cooperatives.

24 CFR Part 231

Aged, Mortgage insurance.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

24 CFR Part 236

Low and moderate income housing, Mortgage insurance, Rent subsidies, Taxes, Utilities, Projects.

24 CFR Part 255

Mortgage insurance.

Accordingly, 24 CFR Parts 207, 213, 220, 221, 231, 234, 236 and 255 are amended as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. Section 207.4 is amended by revising paragraph (c)(1) to read as follows:

§ 207.4 Maximum mortgage amounts.

* * * * *

(c) *Increased mortgage amounts—high cost areas.* (1) In any geographical area where the Commissioner finds that cost levels so require, the Commissioner may increase, by not to exceed 75 percent, the dollar amount limitations set forth in paragraphs (a)(2) and (b) of this section. In such high cost areas, where the Commissioner determines it necessary on a project-by-project basis, the Commissioner may increase these dollar amount limitations by not to exceed 140 percent, except where the mortgage involved has been or is committed to be purchased by the Government National Mortgage Association in implementing its special assistance functions under Section 305 of the National Housing Act, in which case the Commissioner may increase these dollar amount limitations by not to exceed 90 percent.

* * * * *

2. Section 207.32a is amended by revising paragraph (b)(2)(ii)(A) to read as follows:

§ 207.32a Eligibility of mortgages on existing projects.

* * * * *

(b) *Maximum mortgage amounts—general.* * * *

(2) * * *

(ii) *Increased mortgage amounts—high cost areas.* (A) In any geographical area where the Commissioner finds that cost levels so require, the Commissioner may increase, by not to exceed 75 percent, the dollar amount limitations set forth in paragraphs (b)(2) and (b)(2)(i) of this section. In such high cost areas, where the Commissioner determines it necessary on a project-by-project basis, the Commissioner may increase these dollar amount limitations by not to exceed 140 percent, except where the mortgage involved has been or is committed to be purchased by the Government National Mortgage Association in implementing its special assistance functions under Section 305 of the National Housing Act, in which case the Commissioner may increase these dollar amount limitations by not to exceed 90 percent.

* * * * *

3. Section 207.33 is amended by revising paragraph (b)(2) to read as follows:

§ 207.33 Eligibility of mortgages on manufactured home courts or parks.

* * * * *

(b) * * *

(2) In any geographical area where the Commissioner finds that cost levels so require, the Commissioner may increase, by not to exceed 75 percent, the dollar amount limitations set forth in paragraph (b)(1) of this section. In such high cost areas, where the Commissioner determines it necessary on a project-by-project basis, the Commissioner may increase these dollar amount limitations by not to exceed 140 percent, except where the mortgage involved has been or is committed to be purchased by the Government National Mortgage Association in implementing its special assistance functions under Section 305 of the National Housing Act, in which case the Commissioner may increase these dollar amount limitations by not to exceed 90 percent.

* * * * *

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

4. Section 213.7 is amended by revising paragraph (d)(1) to read as follows:

§ 213.7 Maximum mortgage amounts.

* * * * *

(d) *Increased mortgage amounts—high cost areas.* (1) In any geographical area where the Commissioner finds that cost levels so require, the Commissioner may increase, by not to exceed 75

percent, the dollar amount limitations set forth in paragraphs (a)(2) and (g) of this section. In such high cost areas, where the Commissioner determines it necessary on a project-by-project basis, the Commissioner may increase these dollar amount limitations by not to exceed 140 percent, except where the mortgage involved has been or is committed to be purchased by the Government National Mortgage Association in implementing its special assistance functions under Section 305 of the National Housing Act, in which case the Commissioner may increase these dollar amount limitations by not to exceed 90 percent.

* * * * *

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

5. Section 220.507 is amended by revising paragraph (c)(1) to read as follows:

§ 220.507 Maximum mortgage amounts.

* * * * *

(c) *Increased mortgage amounts—high cost areas.* (1) In any geographical area where the Commissioner finds that cost levels so require, the Commissioner may increase, by not to exceed 75 percent, the dollar amount limitations set forth in paragraphs (a) and (b) of this section. In such high cost areas, where the Commissioner determines it necessary on a project-by-project basis, the Commissioner may increase these dollar amount limitations by not to exceed 140 percent, except where the mortgage involved has been or is committed to be purchased by the Government National Mortgage Association in implementing its special assistance functions under Section 305 of the National Housing Act, in which case the Commissioner may increase these dollar amount limitations by not to exceed 90 percent.

* * * * *

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

6. Section 221.514 is amended by revising paragraph (c)(1) to read as follows:

§ 221.514 Maximum mortgage amounts.

* * * * *

(c) *Increased mortgage amounts—high cost areas.* (1) In any geographical area where the Commissioner finds that cost levels so require, the Commissioner may increase, by not to exceed 75 percent, the dollar amount limitations set forth in paragraphs (a)(1) and (b) of this section. In such high cost areas, where the Commissioner determines it necessary on a project-by-project basis, the Commissioner may increase these dollar amount limitations by not to exceed 140 percent, except where the mortgage involved has been or is committed to be purchased by the Government National Mortgage Association in implementing its special assistance functions under Section 305 of the National Housing Act, in which case the Commissioner may increase these dollar amount limitations by not to exceed 90 percent.

* * * * *

PART 231—HOUSING MORTGAGE INSURANCE FOR THE ELDERLY

7. Section 231.6 is amended by revising paragraph (a) to read as follows:

§ 231.6 Increased mortgage amounts—high cost areas.

(a) In any geographical area where the Commissioner finds that cost levels so require, the Commissioner may increase, by not to exceed 75 percent, the dollar amount limitations set forth in §§ 231.3(a) and 231.5. In such high cost areas, where the Commissioner determines it necessary on a project-by-project basis, the Commissioner may increase these dollar amount limitations by not to exceed 140 percent, except where the mortgage involved has been or is committed to be purchased by the Government National Mortgage Association in implementing its special assistance functions under Section 305 of the National Housing Act, in which case the Commissioner may increase these dollar amount limitations by not to exceed 90 percent.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

8. Section 234.530 is amended by revising paragraph (b)(1) to read as follows:

§ 234.530 Increased mortgage amounts.

* * * * *

(b) *High cost areas.* (1) In any geographical area where the Commissioner finds that cost levels so require, the Commissioner may increase, by not to exceed 75 percent, the dollar amount limitations set forth in paragraph (a) of this section and in § 234.525(b). In such high cost areas, where the Commissioner determines it necessary on a project-by-project basis, the Commissioner may increase these dollar amount limitations by not to exceed 140 percent, except where the mortgage involved has been or is committed to be purchased by the Government National Mortgage Association in implementing its special assistance functions under Section 305 of the National Housing Act, in which case the Commissioner may increase these dollar amount limitations by not to exceed 90 percent.

* * * * *

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

9. Section 236.12 is amended by revising paragraph (c)(1) to read as follows:

§236.12 Maximum mortgage amounts.

* * * * *

(c) *Increased mortgage amounts—high cost areas.* (1) In any geographical area where the Commissioner finds that cost levels so require, the Commissioner may increase, by not to exceed 75 percent, the dollar amount limitations set forth in paragraphs (a)(1) and (b) of this section. In such high cost areas, where the Commissioner determines it necessary on a project-by-project basis, the Commissioner may increase these dollar amount limitations by not to exceed 140 percent, except where the mortgage involved has been or is committed to be purchased by the Government National Mortgage Association in implementing its special assistance functions under Section 305 of the National Housing Act, in which case the Commissioner may increase these dollar amount limitations by not to exceed 90 percent.

* * * * *

PART 255—COINSURANCE FOR PRIVATE MORTGAGE LENDERS

10. Section 255.211 is amended by revising paragraph (a)(4)(i) to read as follows:

§ 255.211 Maximum mortgage amounts.

* * * * *

(a) *Dollar limitations on units.* * * *

(4) *Increased mortgage amounts—high cost areas.* (i) In any geographical area where the Commissioner finds that cost levels so require, the Commissioner may increase, by not to exceed 75 percent, the dollar amount limitations set forth in paragraphs (a)(1) and (3) of this section. In such high cost areas, where the Commissioner determines it necessary on a project-by-project basis, the Commissioner may increase these dollar amount limitations by not to exceed 140 percent, except where the mortgage involved has been or is committed to be purchased by the Government National Mortgage Association in implementing its special assistance functions under

Section 305 of the National Housing Act, in which case the Commissioner may increase these dollar amount limitations by not to exceed 90 percent.

* * * * *

(Secs. 207, 211, 213, 220, 221, 231, 234, National Housing Act, as amended (12 U.S.C. 1713, 1715b, 1715e, 1715k, 1715l, 1715v, 1715y); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)))

Dated: April 11, 1983.

W. Calvert Brand,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 83-10332 Filed 4-18-83; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Parts 207, 220, 221, and 236

[Docket No. R-83-986]

Multifamily Housing, Urban Renewal, and Low Cost and Moderate Income Mortgage Insurance

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule provides an alternative method of determining maximum permissible rentals for unsubsidized insured and HUD-held multifamily projects in which rents are determined under Section 207 of the National Housing Act, based upon the current appraised market value of the property. Additionally, the rule ends control of rents by HUD for mortgages insured under Section 220 or Section 221(d)(4) of the Act. This rule is intended to provide project owners with timely recovery of current operating costs and to afford an incentive for owners to preserve projects subject to the rule as a part of the Nation's multifamily rental housing stock.

EFFECTIVE DATE: June 1, 1983.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Program Planning Division, Office of Multifamily Housing Management, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 755-5654. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Statutes authorizing programs of HUD mortgage insurance for unsubsidized multifamily housing generally authorize the Secretary to regulate rentals. Under some program sections of the National Housing Act, such authority is discretionary. See, e.g., Sections 220, 221(d)(4), 12 U.S.C. 1715k, 1715l(d)(4). Under other unsubsidized program authorities, regulation "to provide reasonable rentals to tenants and a reasonable return on the investment" is mandatory. See, e.g., Section 207, 12 U.S.C. 1713. Notwithstanding the statutory differentiations, HUD historically has elected uniformly to regulate rentals in all unsubsidized projects subject to HUD-insured or HUD-held mortgages.

An evaluation of the Department's experience in its unsubsidized rental programs, particularly in the light of recent conditions in rental multifamily markets generally, has led HUD to conclude that the existing methods of determining maximum permissible rentals in unsubsidized projects do not provide timely recovery of current operating costs and a sufficient incentive for owners to preserve such projects as a part of the nation's multifamily rental stock. The Department believes that in numerous projects a rigid rent structure which is not sufficiently responsive to cost increases and changes in market conditions has contributed to defaults or serious delinquencies. Moreover, the Department believes that empirical evidence of recent history indicates a substantial likelihood that administrative interference with market rents, and accordingly with expectations of market rewards based on appreciating values, creates a disincentive to new or continued rental investment. The President's Commission on Housing found:

> After rent control is enacted, landlords tend to disinvest from their real estate ventures. This disinvestment either takes the form of conversion to cooperative or condominium forms of ownership, deferred maintenance, or, in extreme cases, abandonment. The Commission finds that rent control causes a reduction in the quality of existing rental housing stock and discourages the investment of capital in new rental property. The Report of the President's Commission on Housing 92 (1982).

The foregoing finding of the Commission was directed more specifically at forms of local rent control which may take into account neither costs nor appreciation. Nevertheless, the principle of the disincentives to investment which follow from artificial restraint upon market expectations applies as well to a form of rent regulations based on expenses alone, such as that utilized by HUD. Thus, the Commission urged that "unsubsidized projects with FHA-insured loans should not be subject to regulatory control of rents, either by localities or by HUD." Report, *supra*, at 166.

As the insurer or holder (as a result of assignment) of the mortgages on such projects, HUD has a paramount interest in their economic viability. Moreover, HUD is committed to the preservation and enhancement of the quantity and quality of available rental housing. For projects which receive no subsidy, the Department has concluded that the best method of achieving these goals is to allow free markets to determine rents which will enable owners to recover current operating costs and achieve a reasonable rate of return based on present property values.

For projects governed by Sections 220 and 221(d)(4), which do not mandate regulation of rents, the Department has determined that there is no basis for concluding that the objective of providing and maintaining economically sound rental housing is better advanced by rent regulation than without it. Accordingly, the Department is terminating its regulation of rents in such projects.

With respect to unsubsidized projects subject to mortgages insured or held by HUD under Section 207, 223(f), 608, 213 (rental), 234 (rental), 803, 810, or 231(c)(4) of the Act, HUD is revising its method of determining maximum allowable rents. Currently, HUD controls rents in such projects by a strict formula based on historical costs and a rate of return which is a fixed percentage of initial replacement cost. The current method provides no recognition of increased value of the project, thus decreasing the real return to the owner where there is any substantial increase in market value of the project. This below-market return induces many owners to sell or convert their projects, frequently to the detriment of the tenants. The new alternative method permits recovery of current costs and a realistic return on investment to the project owner based on the appreciation of property value. These changes are intended to enhance economic viability and provide the incentive necessary to preserve the existing rental housing stock, to the benefit of all participants in the rental market.

One portion of the revised method—that which permits recovery of costs based on forward-budgeted rather than on historic costs—is also made applicable to subsidized Sections 236 and 221(d)(3) projects.

A proposed rule reflecting the foregoing was published at 47 FR 26852 (June 22, 1982). Comments were received from over six hundred sources (more than five hundred from tenants of a single project), including individuals, tenant groups, trade associations, mortgage bankers, law firms, owners and mortgagors, real estate management

companies, and local and national government representatives. The comments are summarized below by general subject matter category, followed by the Department's response.

Increase in Mortgage Insurance Premium (MIP)

The proposed rule provided for an increase in the mortgage insurance premium to a rate of one percent per annum on the unpaid principal balance of the mortgage, applicable to projects insured under Section 220 or 221(d)(4) not subject to rent regulation or to other projects requesting determination of maximum rents based on appreciated value. Virtually all comments received with respect to the proposed increase in the mortgage insurance premium were negative, viewing the increase as inflationary and unjustified on the basis of sound risk-insurance principles.

The Department has withdrawn the provision for an increase in the MIP for existing mortgages. However, an increase in the MIP for mortgages to be insured in the future is still under consideration by the Department. In reconsidering this proposal, HUD determined that the increase for currently insured mortgages would be administratively difficult to implement because of the need for each mortgagee's acquiescence in the modification of its existing contract of insurance.

Decontrol of Rents

Many tenant commenters objected to the proposal to decontrol rents in Sections 220 and 221(d)(4) projects on the basis of essentially similar arguments, such as that decontrol will lead to exorbitant rent increases which will drive moderate-income tenants out of the projects, and that decontrol will provide windfalls to owners who should be held to a "bargain" of acceptance of government control in exchange for Federal loan insurance and, in some cases, written-down land costs.

The Department believes that such comments misapprehend the purpose of decontrol. It is not intended as a private reward to project owners but instead, for the reasons stated above, as a step toward creating conditions conducive to inducing new and continued investment in the rental housing stock.

In addition, the Department disputes certain of the assumptions inherent in the comments. Although rental increases somewhat larger than those previously obtained may occur, particularly in older projects where rents have been subject to restrictive pressures for longer periods, market forces will continue to restrain the level of rents actually charged. Even in older projects, to the extent that rent limitations have restrained investment in improvements, such conditions will prevent any immediate dramatic increase of rents. The impact of decontrol is more likely to be gradual as owners are induced to maintain and increase investment based on future expectations.

Preemption of Local Rent Control

Several commenters argued that local rent control ordinances are burdensome and result in a high incidence of mortgage default. It was also asserted that HUD's preemption process under 24 CFR Part 403 is inefficient, and that without a strong federal policy of blanket preemption of local rent control in regard to sections 220 and 221(d)(4) projects, the rule's objectives would be defeated. Additionally, some individuals commented that the proposed rule was unclear as to whether the preemption provisions of 24 CFR Part 403, Subpart A, will apply to projects insured under Sections 220 and 221 which are no longer subject to rent regulation by HUD.

Owners of HUD-insured projects faced with financially burdensome rent controls have always been able to seek relief under 24 CFR Part 403. The Department recognizes that the preemption process is not self-executing. However, to the extent owners are prompt in complying with the regulatory procedures for seeking premptive relief, the process has not been inefficient. Moreover, the Department's policy on preemption, as set forth in 24 CFR Part 403, is unequivocal. As such, an owner may request that HUD preempt local rent control laws and determine the maximum permissible rents if the owner can show that, as a consequence of rent control, the project's financial viability is in jeopardy. Accordingly, the Department has declined to alter its policy of preempting local rent control only on a case-by-case basis.

In an effort to remove the ambiguity noted by these individuals, language has been added to §§ 220.511 and 221.531(c) to indicate that the preemption provisions of 24 CFR Part 403 apply to projects subject to mortgages insured under Sections 220 and 221(d)(4) or previously insured under such sections and held by HUD.

The Rule Is Not a Major Rule

Some of the comments challenged HUD's claim that the rule does not constitute a major rule. They argued that the rule would have an annual effect on the economy of $100 million or more, or that rental increases anticipated by the commenters of between twenty and forty percent would constitute a major increase in costs or prices to consumers.

Although the exact impact on rent levels of all affected projects is impossible to predict, the Department believes, contrary to the assertion by commenters, that the annual impact will be substantially less than $100 million. The majority of projects affected by the rule have been built subsequent to 1975, and the immediate impact in such newer projects is unlikely to be great. Further, even in the case of older projects (except, possibly, in a few areas of extraordinary appreciation), the immediate impact is unlikely to be dramatic because of the factors noted above regarding neglect of improvements which might otherwise have made higher rents feasible.

Alternative Method of Determining Maximum Permissible Rentals

A few comments on the alternative method of determining maximum permissible rentals in Section 207 projects criticized the proposed rule's clarity, along with making inquiry about some of the terms used in the provision on "Rent Adjustment" in § 207.19(e)(2). As a result, §§ 207.19(e) (1) and (2) have been substantially revised in an effort to promote clarity and ease of understanding of the method described in those sections. As revised, § 207.19(e)(2)(ii)(A) now indicates that "updated operating costs" do not necessarily have to be audited operating costs. In addition, this paragraph makes clear by the addition of amendatory language that the appraised market value is to be determined in relation to residential rental property, as opposed to commercial or some other property use. Also, a new sentence has been added to § 207.19(e)(2)(ii) to clarify that the appraised market value shall be determined by a qualified, licensed real estate appraiser of the mortgagor's choice.

Other clarifying changes have been made in the proposed rule. The earlier-published version of § 207.19(e) contained a paragraph stating that "the determinations of rent [under § 207.19(e)] shall not diminish the authority of the Commissioner stipulated in the corporate charter or regulatory agreement." Since this language could have been read as precluding the amendment of a regulatory agreement in order to implement the rule's alternative procedure for determining rents, the paragraph (proposed § 207.19(e)(3), 47 FR 26853) has been removed.

One comment asked whether § 207.19(e)(2)(ii) applies to Section

221(d)(4) projects; it does not. As discussed below, § 221.531 (along with § 220.511) has been rewritten. Section 207.19(e) (except for certain named provisions not now relevant) does not apply to 24 CFR Parts 220 and 221. Accordingly, since § 207.19(e)(2)(ii) is a part of § 207.19(e), and the regulations promulgated under Part 221 apply to Section 221(d)(4) projects, § 207.19(e)(2)(ii) does not apply to Section 221(d)(4) projects.

Several commenters suggested that the alternative method of rent calculation be based on current replacement cost or on increase in equity (i.e., taking mortgage paydown into account) rather than on appraised value. The Department finds no rational basis to these suggestions. The revised method is intended to permit an owner to obtain a return based on the value of the investment in order to offset incentives to alter or abandon the investment; it is not intended to provide a return on an artifically inflated investment value, such as would be the case with current replacement cost. The suggestion to base return on the increase in equity has been rejected as more complex than can be justified by the effect, since presumably, in order to avoid distortion, the rate applied would need to be revised as the base against which it is applied is increased not only by market appreciation but also by debt reductions.

One commenter suggested that owners who have funded project operations by advances should be permitted a special means of recovering such advances, such as by adding them to expenses. To the extent that owner advances have maintained or enhanced the value of the property, such effects should be adequately reflected in the return based on appraised value.

A commenter suggested that reasonably anticipated increases in operating costs, for purposes of calculations under the alternative method, should be based on the CPI Inflation Factor rather than on itemized project-based data. However, because the CPI Inflation Factor includes increases in factors which will remain fixed in existing projects (for example, debt service), the Department regards it as unworkable as a proxy for anticipated operating cost increases.

Treatment of Section 231 Projects

This rule does not decontrol rents in projects insured under section 231(c)(4), although so urged by one commenter. The great majority of Section 231 projects are insured under Section 231(c)(3), under which the regulation of rents is required by the statute. For the sake of uniform administration of the insurance programs under Sections 231 (c)(3) and (c)(4), the Department has determined to continue to regulate rents under Secton 231(c)(4) as well. It should be noted, however, that projects insured under Section 231(c)(4) will be affected by the changes in the method of determining rent set out in § 207.19(e) of this rule.

Other Changes

The Department has made some technical amendments to clarify the rule. As a consequence, a new paragraph (6) has been added to § 207.19(e) to specify that the project owner is obligated to refund to tenants all additional rentals disapproved by the Commissioner. In addition, former paragraph (iii) in § 207.19(e)(2)(B) has been redesignated and revised, and now more appropriately becomes § 207.19(e)(3) under the subject heading of "Rent Control." Accordingly, former §§ 207.19(e) (3), (4), and (5) now become §§ 207.19(e) (4), (5), and (6), respectively.

Sections 220.511 and 221.531 have been redrafted to clarify their intent and make them more readily comprehensible. An amendment to Part 220 included in the proposed rule provided that "rents and charges shall be determined by the housing owner based on comparable rents in the local market area for unassisted units in the project" (Proposed § 220.511(b), 47 FR 26854). This language has been deleted from the final rule. It is regarded as unnecessary, and its deletion clarifies that there is no intended residual HUD regulatory control over rents—i.e., HUD will not review the "comparability" of the mortgagor's deregulated rents.

More importantly, the stricken language, referring as it did to "rents and charges", could have been construed as being in conflict with the rule's provision for continued supervision of both rents and charges for certain identified projects (and units within projects) subject to control because of their receipt of Housing Assistance Payments under Section 8 of the United States Housing Act of 1937. As redrafted, § 220.511(c)(1) of the final rule makes clear that these assisted projects or units continue to be subject to the requirement of Comissioner approval before any charge for "facilities or services" (i.e.—non-rent-related charges) may be assessed. Revised §§ 220.511 (c)(2) and (c)(3) continue to provide, in a manner identical to the proposed rule, for special provisions for determining rent adjustments for these assisted units. The final rule clarifies, however, that determinations of rent in accordance with Section 8 New Construction (24 CFR Part 880) and Substantial Rehabilitation (24 CFR Part 881) rules and Housing Assistance Payments Contracts is dependent, not merely on the availability of Section 8 assistance (as the proposed rule implied), but on occupancy of the units by assisted tenants.

Additionally, the final rule adds a reference to 24 CFR Part 886, Subpart C—the Section 8 Housing Assistance Program for the Disposition of HUD-owned Projects. This addition corrects the inadvertent exclusion of this program from the proposed rule's recitation of the categories of projects continuing to be subject to a form of rent regulation. This change affects the amendments to Parts 207, 220 and 221.

Generally, the changes in Part 220 of the rule are carried over into the revised Part 221. Part 221 amendments have been set out more elaborately than in the proposed rule, mainly for increased clarity, but also to set out distinctions between the programs. For example, an amendment has been added in § 221.531(c)(1) to clarify that as to all-elderly (or handicapped) projects (whether or not subject to Housing Assistance Payments Contracts under Section 8), the Commissioner will continue to approve mortgagor charges for "facilities or services," i.e., non-rent-related charges. Continued regulation is considered essential in Part 221 as a means of controlling devices such as "founder's fees" and "life-care contracts" even under circumstances where regulation of rents is considered unnecessary.

Finally, a conforming change has been made in § 221.530(a) to make clear that the general prohibition on charges for accommodations, facilities or services offered by a project, unless such charges are approved in writing by the Commissioner, is subject to the revised rules concerning the adjustment of project rents which are set out in § 221.531(c).

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291. Analysis indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule will eliminate cash deficiencies for some small entities but will not result in additional costs to any small entities.

The Catalog of Federal Domestic Assistance Program number is 14.134.

This rule is listed at 47 FR 48424 as item H–88–82 in the Department's Semiannual Agenda of Regulations published on October 28, 1982, pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects

24 CFR Part 207

Mortgage insurance, Rental housing, Mobil home parks.

24 CFR Part 220

Home improvement, Mortgage insurance, Urban renewal, Rental housing, Loan programs—housing and community development, Projects.

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Displaced families, Single family housing, Projects, Cooperatives.

24 CFR Part 236

Low and moderate income housing, Mortgage insurance, Rent subsidies, Taxes, Utilities, Projects.

Accordingly, 24 CFR Parts 207, 220, 221, and 236 are amended as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. In § 207.19, paragraph (e) is revised to read as follows:

§ 207.19 Required supervision of private mortgagors.

* * * * *

(e) *Rent and charges.* No charge shall be made by the mortgagor for the accommodations (rents), facilities or services offered by the project in excess of those approved by the Commissioner. In approving such charges and in passing upon subsequent rent adjustments, consideration will be given to providing rental income necessary to maintain the economic soundness of the project and a reasonable return on investment consistent with reasonable rents to tenants. The determination will be made as follows:

(1) *Initial rent determination.* The Commissioner will set initial rents in the project before its opening for occupancy. The Commissioner will determine the rent level based upon (i) a debt service factor determined by the Commissioner to cover debt service requirements and a rate of return to the mortgagor, multiplied by the sum of the Replacement Cost and working capital; (ii) estimated project operating costs, including an allowance for management, using the latest available data from comparable properties; and (iii) such additional factors as the Commissioner deems appropriate, such as local market conditions, vacancy rates and use of commercial space. The determination of maximum permissible rentals shall be processed on a form approved by the Commissioner.

(2) *Rent adjustments.* After initial rents are determined, the Commissioner may approve rental adjustments in the amount provided in paragraph (e)(2)(i) or (e)(2)(ii) of this section, at the option of the mortgagor:

(i) The sum of the most recent year's audited operating costs or, as appropriate, updated certified operating costs (taking into consideration reasonably anticipated increases in operating costs which will occur within twelve months of the date of filing of the mortgagor's application for rent adjustment) and the amount derived under paragraph (e)(1)(i) of this section; or

(ii) The lesser of:

(A) The sum of the operating costs determined in accordance with paragraph (e)(2)(i) of this section and the amount derived by multiplying the debt service factor determined under paragraph (e)(1)(i) of this section by the project's appraised market value as residential rental property at the time of the current application for rental adjustment; or

(B) Rentals on comparable conventionally financed projects in the same area, determined in accordance with procedures established by the Commissioner.

For purposes of paragraph (e)(2)(ii)(A) of this section, the appraised market value shall be determined by a qualified, licensed real estate appraiser of the mortgagor's choice.

(3) *Rent control.* Any state or local law, ordinance or regulation regulating the rents of projects subject to this paragraph may be preempted only as provided in Part 403 of this title.

(4) *Special Allocations.* Rent adjustments for projects with units assisted under Part 886, Subparts A or C of this title, Section 8 Housing Assistance Payments Program—Special Allocations, shall be determined pursuant to paragraph (e)(2)(i) of this section.

(5) *Effective date.* Except for rents for projects described in paragraph (e)(4) of this section, all adjustments to maximum permissible rent shall take effect thirty days after the filing of an application for the adjustment with the appropriate HUD office, unless specifically disapproved in writing by the Commissioner. However, if the Commissioner does not approve the maximum permissible rent within thirty days after the filing of the application, additional rentals received by the mortgagor as a result of the adjustment shall be held in an escrow account under such terms as the Commissioner shall direct, or the mortgagor shall provide a letter of credit acceptable to the Commissioner sufficient to cover the additional rent collected, pending the Commissioner's approval or disapproval.

(6) *Refund of additional rentals.* If the Commissioner disapproves all or part of the additional rentals collected pursuant to paragraph (e)(5) of this section, the mortgagor shall promptly refund all disapproved amounts to the affected tenants.

* * * * *

PART 220—URBAN RENEWAL MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS

2. Section 220.511 is revised to read as follows:

§ 220.511 Supervision of mortgagors.

(a) All of the provisions of § 207.19 of this chapter apply, except that (1) § 207.19(e) shall not apply and (2), in the case of a mortgage covering property on which there is located a dwelling or dwellings designed principally for residential use for two to eleven families, § 207.19(d) relating to labor standards and prevailing wage requirements shall not apply.

(b) Except as otherwise provided in paragraphs (c)(1) through (c)(3) of this section, the mortgagor shall determine

the charge for accommodations (rents), facilities, or services offered by the project.

(c)(1) In the case of any project or units within a project described in paragraph (c)(2) or (c)(3) of this section, no charge shall be made by the mortgagor for facilities or services without the approval of the Commissioner.

(2) Rent adjustments for any units assisted under Part 880 of this title (Section 8 Housing Assistance Payments Program for New Construction) or Part 881 of this title (Section 8 Housing Assistance Payments Program for Substantial Rehabilitation) shall not exceed comparable market-rate rents in the project without prior HUD approval. However, to the extent that units in a project are subject to a Section 8 Housing Assistance Payments Contract under Part 880 or Part 881 of this title, the rents for those units, when occupied by assisted tenants, shall be determined in accordance with the Contract and applicable regulations.

(3) Rent adjustments for projects with units assisted under Part 886, Subparts A or C of this title, Section 8 Housing Assistance Payments Program—Special Allocations, shall be determined pursuant to § 207.19(e)(2)(i) of this chapter.

(d) *Rent control.* Any state or local law, ordinance or regulation regulating the rents of projects subject to this paragraph may be preempted only as provided in Part 403 of this title.

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

3. In § 221.530, paragraph (a) is revised to read as follows:

§ 221.530 Supervision applicable to all mortgagors.

(a) Except as provided in § 221.531(c), no charge shall be made by the mortgagor for accommodations (rents), facilities or services offered by the project except those approved in writing by the Commissioner.

* * * * *

4. In § 221.531, paragraph (c) is revised to read as follows:

§ 221.531 Supervision applicable to general mortgagors.

* * * * *

(c) *Rents and charges.* Except as otherwise provided in paragraphs (c)(1) through (c)(4) of this section, the mortgagor shall determine the charge for accommodations, facilities, or services offered by the project.

(1) In the case of any project constructed for occupancy exclusively by elderly and handicapped tenants, or in the case of any project or units within a project described in paragraphs (c)(2) through (c)(4) of this section, no charge shall be made for facilities or services without the approval of the Commissioner.

(2) Rent adjustments for any project insured or formerly insured under Section 221(d)(3) of the Act, whose mortgage bears a below-market interest rate or which has a contract pursuant to Part 215 of this title, shall be made only as set forth in § 207.19(e)(2)(i) of this chapter.

(3) Rent adjustments for any units assisted under Part 880 of this title (Section 8 Housing Assistance Payments Program for New Construction) or Part 881 of this title (Section 8 Housing Assistance Payments Program for Substantial Rehabilitation) shall not exceed comparable market-rate rents in the project without prior HUD approval. However, to the extent that units in a project are subject to a section 8 Housing Assistance Payments Contract under Part 880 or Part 881 of this title, the rents for those units, when occupied by assisted tenants, shall be determined in accordance with the Contract and applicable regulations.

(4) Rent adjustments for projects with units assisted under Part 886, Subparts A or C of this title, Section 8 Housing Assistance Payments Program—Special Allocations, shall be determined in accordance with § 207.19(e)(2)(i) of this chapter.

(5) *Rent control.* Any state or local law, ordinance or regulation regulating the rents of projects subject to this paragraph may be preempted only as provided in Part 403 of this title.

* * * * *

PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENT FOR RENTAL PROJECTS

5. In § 236.55, the introductory language of paragraph (a) is revised to read as follows:

§ 236.55 Rental charges.

(a) *Approved rental charges.* The Secretary shall process the maximum potential rent for the project pursuant to § 207.19(e)(2)(i) of this chapter. The mortgagor shall, with the approval of the Secretary, establish and maintain for each dwelling unit the following:

* * * * *

(Secs. 207, 220, 221 and 236, National Housing Act, 12 U.S.C. 1713, 1715k, 17151, 1715z–1; sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); sec. 211, National Housing Act (12 U.S.C. 1715b))

Dated: April 11, 1983.

Philip Abrams,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 83-10333 Filed 4-18-83; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF JUSTICE

28 CFR Part 0

[Tax Division Directive No. 43]

Redelegation of Authority To Compromise and Close Civil Claims

AGENCY: Tax Division, Department of Justice.

ACTION: Final rule.

SUMMARY: This directive increases the redelegation to various officials of the Tax Division of the authority to compromise, settle and close claims filed in behalf of the United States and claims against the United States. This directive supersedes Tax Division Directive No. 42. The directive also extends such authority to the Special Counsel to the Assistant Attorney General.

EFFECTIVE DATE: This directive shall become effective on April 19, 1983.

FOR FURTHER INFORMATION CONTACT: Mildred L. Seidman, Tax Division, Department of Justice, Washington, D.C. 20530, 202–724–6567.

SUPPLEMENTARY INFORMATION: The Assistant Attorney General for the Tax Division has determined that this directive is not a rule within the meaning of Executive Order 12291 or the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 0

Government employees, (Organization and functions (Government agencies).

In appendix to Subpart Y—*Redelegation of Authority to Compromise and Close Civil Claims*, Tax Division Directive No. 42 is removed and Directive No. 43 is added as follows:

By virtue of the authority vested in me by Part 0 of Title 28 of the Code of Federal Regulations, particularly §§ 0.70, 0.160, 0.162, 0.164, 0.166, and 0.168, it is ordered as follows:

Section 1. The Chiefs of the Civil Trial Sections, the Claims Court Section, and the Appellate Section are authorized to reject offers in compromise, regardless of amount, provided that such action is not opposed by the agency or agencies involved.

Section 2. Subject to the conditions and limitations set forth in Section 6 hereof, the Chiefs of the Civil Trial

Sections and Claims Court Section are authorized to:

(A) Accept offers in compromise in all civil cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $200,000,

(B) Approve adminstrative settlements not exceeding $100,000,

(C) Approve concessions (other than by compromise) of civil claims asserted by the Government in all cases in which the gross amount of the original claim does not exceed $100,000,

(D) Accept offers in compromise in injunction or declaratory judgment suits against the United States in which the amount of the related liability, if any, does not exceed $200,000, and

(E) Accept offers in compromise in all other nonmonetary cases,

provided that such action is not opposed by the agency or agencies involved, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Section 3. Subject to the conditions and limitations set forth in Section 6 hereof, the Chief of the Appellate Section is authorized to:

(A) Accept offers in compromise with reference to litigating hazards of the issues on appeal in all civil cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $200,000,

(B) Accept offers in compromise in declaratory judgment suits against the United States in which the amount of the related liability, if any, does not exceed $200,000, and

(C) Accept offers in compromise in all other nonmonetary cases which do not involve issues concerning collectibility,

provided that such action is not opposed by the agency or agencies involved or the chief of the section in which the case originated, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Section 4. Subject to the conditions and limitations set forth in Section 6 hereof, the Chief of the Office of Review shall have authority to:

(A) Accept offers in compromise in all civil cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $500,000,

(B) Approve administrative settlements not exceeding, $500,000,

(C) Approve concessions (other than by compromise) of civil claims asserted by the Government in all cases in which the gross amount of the original claim does not exceed $500,000,

(D) Accept offers in compromise in all nonmonetary cases, and

(E) Reject offers in compromise, or disapprove administrative settlements or concessions, regardless of amount,

provided that the action is not opposed by the agency or agencies involved or the chief of the section to which the case is assigned, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Section 5. Subject to the conditions and limitations set forth in Section 6 hereof, the Deputy Assistant Attorneys General and the Special Counsel to the Assistant Attorney General each shall have authority to:

(A) Accept offers in compromise of claims against the Government in all cases in which the amount of the Government's concession, exclusive of statutory interest, does not exceed $750,000,

(B) Approve administrative settlements not exceeding, $750,000,

(C) Accept offers in compromise of claims in behalf of the Government in all cases in which the difference between the gross amount of the original claim and the proposed settlement does not exceed $750,000 or 10 percent of the original claim, whichever is greater,

(D) Approve concessions (other than by compromise) of civil claims asserted by the Government in all cases in which the gross amount of the original claim does not exceed $750,000,

(E) Accept offers in compromise in all nonmonetary cases, and

(F) Reject offers in compromise, or disapprove administrative settlements or concessions, regardless of amount,

provided that such action is not opposed by the agency or agencies involved, and provided further that the case is not subject to reference to the Joint Committee on Taxation.

Section 6. The authority redelegated herein shall be subject to the following conditions and limitations:

(A) When, for any reason, the compromise or administrative settlement or concession of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims totalling more than the respective amounts designated in Sections 2, 3, 4 and 5 the case shall be forwarded for review at the appropriate level.

(B) When, because of the importance of a question of law or policy presented, the position taken by the agency or agencies or by the United States Attorney involved, or any other considerations, the person otherwise authorized herein to take final action (or the Chief of the Office of Review, in cases which have been considered by such office) is of the opinion that the proposed disposition should be reviewed at a higher level, the case shall be forwarded for such review.

(C) If the Department has previously submitted a case to the Joint Committee on Taxation leaving one or more issues unresolved, any subsequent compromise or concession in that case must be submitted to the Joint Committee, whether or not the overpayment exceeds the amount specified in Section 6405 of the Internal Revenue Code.

(D) Nothing in this Directive shall be construed as altering any provision of Subpart Y of Part O of Title 28 of the Code of Federal Regulations requiring the submission of certain cases to the Attorney General, the Deputy Attorney General, or the Solicitor General.

(E) Authority to approve recommendations that the Government confess error, or make administrative settlements, in cases on appeal, is excepted from the foregoing redelegations.

(F) The Assistant Attorney General, at any time, may withdraw any authority delegated by this Directive as it relates to any particular case or category of cases, or to any part thereof.

Section 7. This Directive supersedes Tax Division Directive No. 42, effective October 7, 1982.

Section 8. This Directive shall become effective on the date of its publication in the Federal Register.

Glenn L. Archer, Jr.,

Assistant Attorney General Tax Division.

Dated: April 6, 1983.

Edward C. Schmults,

Deputy Attorney General.

[FR Doc. 83-10215 Filed 4-18-83; 8:45 am]

BILLING CODE 4410-01-M

SELECTIVE SERVICE SYSTEM

32 CFR Parts 1656 and 1660

Selective Service Regulations; Alternative Service

AGENCY: Selective Service System.

ACTION: Final rule.

SUMMARY: Procedures to implement the program of alternative service under section 6(j) of the Military Selective Service Act (50 U.S.C. App. 456(j)) are revised to assure greater fairness and efficiency in its administration.

EFFECTIVE DATE: April 19, 1983.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, Washington, D.C. 20435 Phone: (202) 724-1167.

SUPPLEMENTARY INFORMATION: These amendments to Selective Service Regulations were published for comment pursuant to section 13(b) of the Military Selective Service Act (50 U.S.C. App. 463(b)) on February 18, 1983, at 47 FR 7205. All comments that were received timely have been carefully considered. The final rule is identical with the proposed rule.

Various sections of 32 CFR Chapter XVI will be revised in separate rule making to bring them in consonance with this rule.

The Proposed Concept of Alternative Service (46 FR 6998, January 22, 1981) has no stature and should not be considered in interpreting these regulations.

As required by Executive Order 12291, I have determined that this proposed rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), I have determined that these regulations do not have significant economic impact on a substantial number of small entities.

List of Subjects in 32 CFR Part 1656

Armed Forces, Draft, Conscientious objection.

Dated: April 14, 1983.

Thomas K. Turnage,

Director.

PART 1660—[REMOVED]

32 CFR Part 1660, Alternate Service, is removed.

32 CFR Part 1656 is added to read as follows:

PART 1656—ALTERNATIVE SERVICE

Sec.

1656.1 Purpose; definitions.
1656.2 Order to perform alternative service.
1656.3 Responsibility for administration.
1656.4 Alternative Service Office: Jurisdiction and authority.
1656.5 Eligible employment.
1656.6 Overseas assignments.
1656.7 Employer responsibilities.
1656.8 Employment agreements.
1656.9 Alternative service worker's responsibilities.
1656.10 Job placement.
1656.11 Job performance standards and sanctions.
1656.12 Job reassignment.
1656.13 Review of alternative service job assignments.
1656.14 Postponement of reporting date.
1656.15 Suspension of order to perform alternative service because of hardship to dependents.
1656.16 Early release—grounds and procedures.
1656.17 Administrative complaint process.
1656.18 Computation of creditable time.
1656.19 Completion of alternative service.
1656.20 Expenses for emergency medical care.

Authority: Sec. 6(j) Military Selective Service Act; 50 U.S.C. App. 456(j).

§ 1656.1 Purpose; definitions.

(a) The provisions of this part govern the administration of registrants in Class 1-W and the Alternative Service Program.

(b) The definitions of this paragraph shall apply in the interpretation of the provisions of this part:

(1) *Alternative Service (AS).* Civilian work performed in lieu of military service by a registrant who has been classified in Class 1-W.

(2) *Alternative Service Office (ASO).* An office to administer the Alternative Service Program in a specified geographical area.

(3) *Alternative Service Office Manager (ASOM).* The head of the ASO.

(4) *Alternative Service Work.* Civilian work which contributes to the maintenance of the national health, safety or interest, as the Director may deem appropriate.

(5) *Alternative Service Worker (ASW).* A registrant who has been found to be qualified for service and has been ordered to perform alternative service (Class 1-W).

(6) *Civilian Review Board.* A board to review appeals by ASWs of job assignments.

(7) *Creditable Time.* Time that is counted toward an ASWs fulfillment of his alternative service obligation.

(8) *Director.* The Director of Selective Service, unless used with a modifier.

(9) *Employer.* Any institution, firm, agency or corporation engaged in lawful activity in the United States, its territories or possessions, or in the Commonwealth of Puerto Rico, that has been approved by Selective Service to employ ASWs.

(10) *Job Assignment.* A job with an eligible employer to which an ASW is assigned to perform his alternative service.

(11) *Job Bank.* A current inventory of alternative service job openings.

(12) *Job Matching.* A comparison of the ASW's work experience, education, training, special skills, and work preferences with the requirements of the positions in the job bank.

(13) *Job Placement.* Assignment of the ASW to alternative service work.

(14) *Open Placement.* The assignment of ASWs without employer interview to employers who have agreed to employ all ASWs assigned to them up to an agreed number.

§ 1656.2 Order to perform alternative service.

The local board of jurisdiction shall order any registrant who has been classified in Class 1-O-Q to perform alternative service at a time and place to be specified by the Director.

§ 1656.3 Responsibility for administration.

(a) The Director in the administration of the Alternative Service Program shall establish and implement appropriate procedures to:

(1) Assure that the program complies with the Selective Service Law;

(2) Provide information to ASWs about their rights and duties;

(3) Find civilian work for ASWs;

(4) Place ASWs in jobs approved for alternative service;

(5) Monitor the work performance of ASWs placed in the program;

(6) Order reassignment and authorize job separation;

(7) Issue certificates of completion;

(8) Specify the location of Alternative Service Offices;

(9) Specify the geographical area in which the ASOs shall have jurisdiction over ASWs;

(10) Establish Civilian Review Boards and panels and provide for the selection and appointment of members thereof;

(11) Refer to the Department of Justice, when appropriate, any ASW who fails to perform satisfactorily his alternative service;

(12) Perform all other functions necessary for the administration of the Alternative Service Program; and

(13) Delegate any of his authority to such office, agent or person as he may designate and provide as appropriate for the subdelegation of such authority.

(b) The Region Director shall be responsible for the administration and operation of the Alternative Service Program in his Region as prescribed by the Director.

(c) The State Director shall perform duties for the administration and operation of the Alternative Service Program in his State as prescribed by the Director.

(d) The ASOM shall perform duties for the administration and operation of the Alternative Service Program as prescribed by the Director.

(1) The ASO shall be an office of record that is responsible for the administration and operation of the Alternative Service Program in its assigned geographical area of jurisdiction.

(2) The staff of each ASO shall consist of as many compensated employees as shall be authorized by the Director.

(3) Appointment of civilians to ASO positions requiring direct dealing with ASWs will be made as soon as feasible.

(e) The manager of an area office shall perform duties for Alternative Service as prescribed by the Director.

§ 1656.4 Alternative Service Office: Jurisdiction and authority.

(a) Jurisdiction over the ASW will be transferred from the area office immediately after his classification in Class 1–W to the ASO that administers the Alternative Service Program in the area in which he is assigned to perform alternative service.

(b) The ASO shall:

(1) Evaluate and approve jobs and employers for Alternative Service;

(2) Order the ASW to report for alternative service work;

(3) Issue such orders as are required to schedule the ASW for job interviews;

(4) Issue such orders as are required to schedule the ASW for job placement;

(5) Monitor the ASW's job performance;

(6) Issue a certificate of satisfactory completion of the ASW's Alternative Service obligation;

(7) Return the ASW to the jurisdiction of the area office from which he was directed to perform Alternative Service; and

(8) Perform such other actions the Director may authorize as necessary to administer the Alternative Service Program.

§ 1656.5 Eligible employment.

(a) The Director will determine in accordance with the Selective Service Law which civilian employment programs or activities are appropriate for Alternative Service work.

(1) Employers which are considered appropriate for Alternative Service assignments are limited to:

(i) The U.S. Government or a state, territory or possession of the United States or a political subdivision thereof, the District of Columbia or the Commonwealth of Puerto Rico;

(ii) Organizations, associations or corporations primarily engaged either in a charitable activity conducted for the benefit of the general public or in carrying out a program for the improvement of the public health, welfare or environment, including educational and scientific activities in support thereof, when such activity or program is not principally for the benefit of the members of such organization, association or corporation or for increasing the membership thereof.

(2) Employment programs or activities generally considered to be appropriate for Alternative Service work include:

(i) Health care services, including but not limited to hospitals, nursing homes, extended care facilities, clinics, mental health programs, hospices, community outreach programs and hotlines;

(ii) Educational services, including but not limited to teachers, teacher's aides, counseling, administrative support, parent counseling, recreation, remedial programs and scientific research;

(iii) Environmental programs, including but not limited to conservation and firefighting, park and recreational activities, pollution control and monitoring systems, and disaster relief;

(iv) Social services, including but not limited to sheltered or handicapped workshops, vocational training or retraining programs, senior citizens activities, crisis intervention and poverty relief;

(v) Community services, including but not limited to fire protection, public works projects, sanitation services, school or public building maintenance, correctional facility support programs, juvenile rehabilitation programs, and

(vi) Agricultural work.

(b) An organization desiring to employ ASWs is encouraged to submit a request in writing to the Director or an ASOM for approval. Such requests will be considered at any time.

(c) Selective Service shall negotiate employment agreements with prospective employers with the objective of obtaining an adequate number of agreements to assure the timely placement of all ASWs. Participating employers will provide prospective job listings to Selective Service.

(d) Selective Service shall also negotiate employment agreements with eligible employers wherein the employer will agree to hire a specified number of ASWs for open placement positions.

(e) As soon as a registrant is classified I–O–Q, he may seek his own alternative service work by identifying a job with an employer he believes would be eligible for Alternative Service and by having the employer advise the ASO in writing that he desires to employ the ASW. The acceptability of the job and employer so identified will be evaluated in accordance with Section 1656.5(a).

§ 1656.6 Overseas assignments.

Alternative Service job assignments outside the United States, its territories or possessions or the Commonwealth of Puerto Rico, will be allowed when:

(a) The employer is deemed eligible to employ ASWs and is based in the United States, its territories or possessions, or the Commonwealth of Puerto Rico;

(b) The job meets the criteria listed in § 1656.5(a);

(c) The ASW and the employer submit a joint application to Selective Service for the ASW to be employed in a specific job;

(d) The employer satisfies Selective Service that the employer has the capability to supervise and monitor the overseas work of the ASW; and

(e) International travel is provided without expense to Selective Service.

§ 1656.7 Employer responsibilities.

Employers participating in the Alternative Service Program are responsible for:

(a) Complying with the employment agreement with Selective Service;

(b) Providing a clear statement of duties, responsibilities, compensation and employee benefits to the ASW;

(c) Providing full-time employment for ASWs;

(d) Assuring that wages, hours and working conditions of ASWs confrom with Federal, state and local laws;

(e) Providing adequate supervision of ASWs in their employ; and

(f) Providing nondiscriminatory treatment of ASWs in their employ.

§ 1656.8 Employment agreements.

(a) *Nature of Agreement.* Before any ASW is placed with an employer, Selective Service and the employer shall enter into an employment agreement that specifies their respective duties and responsibilities under the Alternative Service Program.

(b) *Restrictions on Selective Service.* The Selective Service System shall not act in any controversy involving ASW's wages, hours and working conditions except to the extent any of these subjects is specifically covered in § 1656.7, § 1656.9, or the employment agreement between Selective Service and the employer.

(c) *Investigating and Negotiating.* Whenever there is evidence that an employer appears to be in violation of § 1656.7, Selective Service will investigate the matter. If the investigation produces substantial evidence of violations of § 1656.7, Selective Service will resolve the matter.

(d) *Termination of Employment Agreement.* If a resolution of a dispute cannot be reached by negotiation within a reasonable time, the Selective Service System shall terminate the employment agreement and shall reassign the ASW.

§ 1656.9 Alternative service worker's responsibilities.

(a) A registrant classified in Class 1-W is required to comply with all orders issued under this part.

(b) A registrant classified in Class 1-W is liable to perform 24 months of creditable time toward completion of Alternative Service, unless released earlier by the Director.

§ 1656.10 Job placement.

(a) Selective Service will maintain a job bank for the exclusive purpose of placing ASWs in alternative service jobs.

(b) An ASW who has identified his own job in accordance with § 1656.5(e) of this part may be assigned by the ASO in that job pending review of the job by Selective Service. If the job is then approved as Alternative Service Work in accordance with § 1656.5(a) the ASW will receive creditable time beginning with the date he was placed on the job by Selective Service. If the job is not approved he will not receive creditable time and will be placed by Selective Service in a position approved for Alternative Service Work. Selective Service must review the job within 30 calendar days of the time it assigned the ASW to begin work. If the elapsed time from date of placement to the date of Selective Service review exceeds 30 days, the ASW will receive creditable time from the date of placement regardless of the final determination of employer eligibility made by Selective Service. If the placement is ultimately determined to be inappropriate for Alternative Service the ASW will be reassigned in accordance with § 1656.12.

(c) In making job interview referrals and in making assignments of ASWs to jobs, Selective Service will consider the compatibility of the ASW's skills, work experience, and preferences with the qualification criteria for the job.

(d) When An ASW is hired, the ASO will issue a Job Placement Order specifying the employer, the time, date and place to report for his alternative service work.

(e) The ASO will normally place the ASW in an alternative service job within 30 calendar days after classification in Class 1-W.

§ 1656.11 Job performance standards and sanctions.

(a) *Standards of Performance.* An ASW is responsible for adhering to the standards of conduct, attitude, appearance and performance demanded by the employer of his other employees in similar jobs. If there are no other employees, the standards shall conform to those that are reasonable and customary in a similar job.

(b) *Failure to Perform.* An ASW will be deemed to have failed to perform satisfactorily whenever:

(1) He refuses to comply with an order of the Director issued under this part;

(2) He refuses employment by an approved employer who agrees to hire him;

(3) His employer terminates the ASW's employment because his conduct, attitude, appearance or performance violates reasonable employer standards; or

(4) He quits or leaves his job without reasonable justification, and has not submitted an appeal of his job assignment to the Civil Review Board.

(c) *Sanctions for ASW's Failure to Perform.*—(1) The sanctions for failure to meet his Alternative Service obligation are job reassignment, loss of creditable time during such period and referral to the Department of Justice for failure to comply with the Military Selective Service Act.

(2) Prior to invoking any of the sanctions discussed herein, the ASO will conduct a review as prescribed in § 1656.17 of all allegations that an ASW has failed to perform pursuant to any of the provisions of § 1656.11(b).

§ 1656.12 Job reassignment.

(a) *Grounds for Reassignment.* The Director may reassign an ASW whenever the Director determines that:

(1) The job assignment violates the ASW's religious, moral or ethical beliefs or convictions as to participation in a war that led to his classification as a conscientious objector or violates § 1656.5(a) of this part.

(2) An ASW experiences a change in his mental or physical condition which renders him unfit or unable to continue performing satisfactorily in his assigned job;

(3) An ASW's dependents incur a hardship which is not so severe as to justify a suspension of the Order to Perform Alternative Service under § 1656.15;

(4) The ASW's employer ceases to operate an approved program or activity;

(5) The ASW's employer fails to comply with terms and conditions of these regulations or;

(6) Continual and severe differences between the ASW's employer and ASW remain unresolved.

(7) The sanctions authorized in § 1656.11 should be applied.

(b) *Who May Request Reassignment.* Any ASW may request reassignment to another job. An employer may request job reassignment of an ASW who is in his employ.

(c) *Method for Obtaining a Reassignment.* All requests for reassignment must be in writing with the reasons specified. The request may be filed with the ASO of jurisdiction at any time during an ASW's alternative service employment. An ASW must continue in his assigned job, if available, until the request for assignment is approved.

§ 1656.13 Review of alternative service job assignments.

(a) Review of ASW job assignments will be accomplished in accordance with the provisions of this subsection.

(b) Whenever the ASW believes that his job assignment violates his religious, moral or ethical beliefs or convictions as to participation in war that led to his classification as a conscientious objector or is in violation of the provisions of this part he may request a reassignment by the ASOM, as provided for in § 1656.12.

(c) The ASOM shall reassign the ASW if the ASOM concludes that the ASW's work assignment violates his religious, moral or ethical beliefs or convictions as to participation in war which led to his classification as a CO or is in violation of the provisions of this part.

(d) If the ASOM does not reassign the ASW, the ASW may, within 15 days after the date of mailing of the decision of the ASOM, request a review of his job assignment by a Civilian Review Board.

(e) The Director shall establish a Civilian Review Board for each ASO in whose area ASW's are working. The Civilian Review Board shall consist of not less than three members who will serve without compensation. The Director may establish panels. No person will be appointed to a Civilian Review Board who would be ineligible for appointment to a District Appeal Board. A member of a Civilian Review Board would be disqualified in any case that a member of a District Appeal Board would be disqualified under the provisions of § 1605.25(a), (b) of this chapter. Each Board, or panel thereof, shall elect a chairman and a vice-chairman at least every two years. A majority of the members of the Board when present at any meeting shall constitute a quorum for the transaction of business. A majority of the members present at any meeting at which a quorum is present shall decide any question. Every member, unless disqualified, shall vote on every question. In case of a tie vote on a question, the Board shall postpone action until the next meeting. If the

question remains unresolved at the next meeting, the Director will transfer the case to another board. If, through death, resignation, or other causes, the membership of the Board falls below the prescribed number of members, the Board or panel shall continue to function, provided a quorum of the prescribed membership is present at each official meeting.

(f) It shall be the function of the Civilian Review Board to determine whether or not an ASW's job assignment violates the ASW's religious, moral, or ethical beliefs of convictions as to participation in war which led to his classification as a conscientious objector or is in violation of the provisions § 1656.5(a) of this part. In making the former determination, the Review Board must be convinced by the ASW that if the ASW performed the job, his convictions as to participation in war would be violated in a similar way as if the ASW had participated in war.

(g) The Civilian Review Board may affirm the assignment or order the reassignment of the ASW in any matter considered by it.

(h) Procedures of the Civilian Review Board are:

(1) Appeals to the Board shall be in writing, stating as clearly as possible the ground for the appeal.

(2) The ASW may appear before the Board at his request. He may not be represented by counsel or present witnesses. The ASOM or his representative may represent the Selective Service System at the hearing and present evidence.

(3) The Board's determination will be based on all documents in the ASW's file folder and statements made at the hearing.

(4) The decision of the Board will be binding only in the case before it. A decision of a Board will not be relied upon by a Board in any other case.

(5) A decision of the Board is not subject to review within the Selective Service System.

§ 1656.14 Postponement of reporting date.

(a) *General.* The reporting date in any of the following orders may be postponed in accord with this section.

(1) Report for Job Placement;

(2) Report for a Job Interview; or

(3) Report to an Employer to Commence Employment.

(b) *Requests for Postponement.* A request for postponement of a reporting date specified in an order listed in (a) must be made in writing and filed prior to the reporting date with the office which issued the order. Such requests must include a statement of the nature of the emergency and the expected period of its duration.

(c) *Grounds for Postponement.* An ASW may, upon presentation of the appropriate facts in his request, be granted a postponement based on one or more of the following conditions:

(1) The death of a member of his immediate family;

(2) An extreme emergency involving a member of his immediate family;

(3) His serious illness or injury; or

(4) An emergency condition directly affecting him which is beyond his control.

(d) *Basis for Considering Request.* The ASW's eligibility for a postponement shall be determined by the office of jurisdiction based upon official documents and other written information contained in his file. Oral statements made by the ASW or made by another person in support of the ASW shall be reduced to writing and placed in the ASW's file.

(e) *Duration of Postponement.* The initial postponement shall not exceed 60 days from the reporting date in the order. When necessary, the Director may grant one further postponement, but the total postponement period shall not exceed 90 days from the reporting date in the order invovled.

(f) *Termination of Postponement.*—(1) A postponement may be terminated by the Director for cause upon no less than ten days written notice to the ASW.

(2) Any postponement shall be terminated when the basis for the postponement has ceased to exist.

(3) It is the responsibility of the ASW promptly to notify in writing the office that granted the postponement whenever the basis for which his postponement was granted ceases to exist.

(g) *Effect of Postponement.* A postponement of the reporting date in an order shall not render the order invalid, but shall only serve to postpone the date on which the ASW is to report. The ASW shall report at the expiration or termination of the postponement.

(h) *Religious Holiday.* The Director may authorize a delay of reporting under any of the orders specified for an ASW whose date to report conflicts with a religious holiday historically observed by a recognized church, religious sect or religious organization of which he is a member. Any ASW so delayed shall report on the next business day following the religious holiday.

§ 1656.15 Suspension of order to perform alternative service because of hardship to dependents.

(a) Whenever, after an ASW has begun work, a condition develops that results in hardship to his dependent as contemplated by § 1630.30(a) of this chapter which cannot be alleviated by his reassignment under § 1656.12 (a)(3) of this part, the ASW may request a suspension of Order to Perform Alternative Service. If the local board that ordered the ASW to report for Alternative Service determines he would be entitled to classification in Class 3–A, assuming that the ASW were eligible to file a claim for that class, further compliance with his order shall be suspended for a period not to exceed 365 days, as the local board specifies. Extensions of not more than 365 days each may be granted by the local board so long as the hardship continues until the ASW's liability for training and service under the Military Selective Service Act terminates.

(b) An ASW may file a request for the suspension of his Order to Perform Alternative Service with the ASO. This request must be in writing, state as clearly as possible the basis for the request, and be signed and dated by the ASW. The ASW must continue working in his assigned job until his request for the suspension of his Order to Perform Alternative Service has been approved.

(c) Local boards shall follow the procedures established in Parts 1642 and 1648 of this chapter to the extent they are applicable in considering a request for the suspension of an Order to Perform Alternative Service.

§ 1656.16 Early release—grounds and procedures.

(a) *General Rule of Service Completion.* An ASW will not be released from alternative service prior to completion of 24 months of creditable service unless granted an early release.

(b) *Reasons For Early Release.* The Director may authorize the early release of an ASW whenever the ASO determines that the ASW:

(1) Has failed to meet the performance standards of available alternative service employment because of physical, mental or moral reasons;

(2) No longer meets the physical, mental or moral standards that are required for retention in the Armed Forces based on a physical or mental examination at a MEPS or other location designated by Selective Service;

(3) Is planning to return to school and has been accepted by such school and scheduled to enter within 30 days prior

to the scheduled completion of his alternative service obligation;

(4) Has been accepted for employment and that such employment will not be available if he remains in alternative service the full 24 months. Such early release shall not occur more than 30 days before the scheduled completion of his alternative service obligation; or

(5) Has enlisted in or has been inducted into the Armed Forces of the United States.

(c) *Reclassification and Records.* Upon granting an early release to an ASW, the Director will reclassify the ASW and transfer his records in accordance with § 1656.19 of this part.

§ 1656.17 Administrative complaint process.

(a) Whenever the ASOM learns that the ASW may have failed to perform satisfactorily his work (see § 1656.11(b)) or he receives a complaint by an employer or an ASW involving the ASW's work other than matters described in § 1656.8(b) of this part, he shall take necessary action to:

(1) Interview, as appropriate, all parties concerned to obtain information relevant to the problems or complaints;

(2) Place a written summary of each interview in the ASW's file and employer's file;

(3) Inform the persons interviewed that they may prepare and submit to him within ten days after the interview their personal written statements concerning the problem;

(4) Place such statements in the ASW's file; and

(5) Resolve the matter.

(b) The employer or ASW may seek a review of the decision pursuant to § 1656.17(a)(5). Such request must be filed in writing with the ASO, for action by the State Director of Selective Service, within ten days after the date the notice of the decision is transmitted to the ASW and employer.

§ 1656.18 Computation of creditable time.

(a) Creditable time starts when the ASW begins work pursuant to an Order to Perform Alternative Service or 30 days after the issuance of such order, whichever occurs first. Creditable time will accumulate except for periods of:

(1) Work of less than 35 hours a week or an employer's full-time work week whichever is greater;

(2) Leaves of absence in a calendar year of more than 5 days in the aggregate granted by the employer to the ASW to attend to his personal affairs unless such absence is approved by the ASOM;

(3) Time during which an ASW fails or neglects to perform satisfactorily his assigned Alternative Service;

(4) Time during which the ASOM determines that work of the ASW is unsatisfactory because of his failure to comply with reasonable requirements of his employer;

(5) Time during which the ASW is not employed in an approved job because of his own fault; or

(6) Time during which the ASW is in a postponement period or his Order to Perform Alternative Service has been suspended.

(b) Creditable time will be awarded for periods of travel, job placement and job interviews performed under orders issued by Selective Service. Creditable time may be awarded for normal employer leave periods.

(c) Creditable time will be awarded to an ASW for the time lost after he leaves his job assignment following his request for reassignment on the basis of § 1656.13(b) of this part until he is reassigned pursuant to § 1656.13 (c) or (g) of this part. Creditable time for the corresponding period will be lost if neither the ASOM nor the Civilian Review Board orders the ASW's reassignment on the basis of § 1656.12(a)(1) of this part.

§ 1656.19 Completion of alternative service.

Upon completion of 24 months of creditable time served in alternative service or when released early in accordance with § 1656.16(b) (3) or (4):

(a) The ASW shall be released from the Alternative Service Program; and

(b) The Director shall issue to the ASW a Certificate of Completion and the registrant shall be reclassified in Class 4–W in accordance with § 1630.47 of this chapter, and

(c) The ASW's records shall be returned to the area office of jurisdiction after the ASW has completed his obligation or has been separated from the Alternative Service Program for any reason.

§ 1656.20 Expenses for emergency medical care.

(a) Claims for payment of actual and reasonable expenses for emergency medical care, including hospitalization, of ASWs who suffer illness or injury, and the transportation and burial of the remains of ASWs who suffer death as a direct result of such illness or injury will be paid in accordance with the provisions of this section.

(b) The term "emergency medical care, including hospitalization", as used in this section, means such medical care or hospitalization that normally must be rendered promptly after occurrence of the illness or injury necessitating such treatment. Discharge by a physician or facility subsequent to such medical care or hospitalization shall terminate the period of emergency.

(c) Claims will be considered only for expenses:

(1) For which only the ASW is liable and for which there is no legal liability for his reimbursement except in accord with the provisions of this section; and

(2) That are incurred as a result of illness or injury that occurs while the ASW is acting in accord with orders of Selective Service to engage in travel or perform work for his Alternative Service employer.

(d) No claim shall be allowed in any case in which the Director determines that the injury, illness, or death occurred because of the negligence or misconduct of the ASW.

(e) No claim shall be paid unless it is presented to the Director within one year after the date on which the expense was incurred.

(f) Cost of emergency medical care including hospitalization greater than usual and customary fees for service established by the Social Security Administration, will *prima facie* be considered unreasonable. Payment for burial expenses shall not exceed the maximum that the Administrator of Veteran's Affairs may pay under the provisions of 38 U.S.C. 902(a) in any one case.

(g) Payment of claims when allowed shall be made only directly to the ASW or his estate unless written authorization of the ASW or the personal representative of his estate has been received to pay another person.

[FR Doc. 83-10358 Filed 4-18-83; 8:45 am]
BILLING CODE 8015-01-M

VETERANS ADMINISTRATION

38 CFR Part 17

Dental Benefits; Eligibility Amendments

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The Veterans Administration (VA) is amending its regulation concerning dental benefits to include changes in eligibility for dental treatment resulting from the enactment of recent legislation. Section 612(b) of title 39 U.S. Code now provides that any needed dental care may be provided to former prisoners of war who were interned for six months or more; and to

any veteran who has a service-connected disability rated as total. Dental care may also be provided to eligible veterans who served on active duty for a period of not less than 180 days. For those discharged or released after September 30, 1981, application for treatment must be made within 90 days of such discharge. Discharged enlisted personnel need not apply for dental benefits after each period of enlistment to preserve their eligibility for dental care, provided they re-enlist within a specified time limit.

DATES: This regulation is effective April 5, 1983. .

FOR FURTHER INFORMATION CONTACT: Joseph F. Fleckenstein (202) 389-2851.

SUPPLEMENTARY INFORMATION: Section 102 of Pub. L. 96-22 amended section 612 of title 38 U.S.C. to provide authority to furnish any needed dental care to former prisoners of war who were interned for six months or more; and to any veteran who has a service-connected disability rated as total. Section 2002 of Pub. L. 97-35 amended Section 612 of title 38 U.S.C. to provide that Class II dental benefits will only be provided to eligible veterans who had served on active duty for a period of not less than 180 days. For those discharged or released after September 30, 1981, application for treatment must be made within 90 days of such discharge or release. Dental care will not be provided if the applicant's certificate of discharge or release bears a certification that a complete dental examination and appropriate dental services were provided within 90 days of discharge or release. Section 103 of Pub. L. 97-72 amended Section 612(b)(2) of title 38 U.S.C. to provide that discharged enlisted personnel need not apply for Class II dental benefits after each period of enlistment provided they re-enlist within a specified time limit. Retroactive dental benefits may be provided to previously discharged veterans who had applied for and were denied certain dental benefits because the dental condition was not related to their last period of active duty. Dental benefits will be limited to the treatment of service-connected noncompensable conditions.

On pages 52732 and 52733 of the Federal Register of November 23, 1982, the proposed regulation was published for title 38, Code of Federal Regulations, § 17.123. Interested persons were given 30 days to submit comments, suggestions or recommendations. No comments were received regarding the proposed regulation. The proposed regulation is hereby adopted without change and is set forth below.

The Administrator has determined that this revision to VA regulations is considered nonmajor under the criteria of Executive Order 12291, Federal Regulation. The Administrator hereby certifies that this proposed regulation will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C., sections 601-612. Pursuant to 5 U.S.C. section 605(b), this regulation is therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that this rule will only be applicable in the case of certain veterans applying for dental care.

(The catalog of Federal Domestic Assistance number is 64.011)

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs—Health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: April 5, 1983.
By direction of the Administrator.

Everett Alvarez, Jr.
Deputy Administrator.

PART 17—MEDICAL

1. Section 17.123 is amended by revising paragraphs (b) and (d); adding new paragraphs (e), (f), and (h); and by redesignating the following paragraphs: (e) is redesignated as (g), (f) is redesignated as (i), and (g) is redesignated as (j). The new and revised material reads as follows:

§ 17.123 Authorization of outpatient dental treatment

* * * * *

(b) Class II. (1)(i) Those having a service-connected noncompensable dental condition or disability shown to have been in existence at time of discharge or release from active service, which took place after September 30, 1981, may be authorized any treatment indicated as reasonably necessary for the one-time correction of the service-connected noncompensable condition, but only if:

(A) They were discharged or released, under conditions other than dishonorable, from a period of active military, naval or air service of not less than 180 days.

(B) Application for treatment is made within 90 days after such discharge or release.

(C) The certificate of discharge or release does not bear a certification that the veteran was provided, within the 90-day period immediately before such discharge or release, a complete dental examination (including dental X-rays) and all appropriate dental treatment indicated by the examination to be needed, and

(D) Veterans Administration dental examination is completed within six months after discharge or release, unless delayed through no fault of the veteran.

(ii) Those veterans discharged from their final period of service after August 12, 1981, who had reentered active military service within 90 days after the date of a discharge or release from a prior period of active military service, may apply for treatment of service-connected noncompensable dental conditions relating to any such periods of service within 90 days from the date of their final discharge or release.

(iii) If a disqualifying discharge or release has been corrected by competent authority, application may be made within 90 days after the date of correction.

(2)(i) Those having a service-connected noncompensable dental condition or disability shown to have been in existence at time of discharge or release from active service, which took place before October 1, 1981, may be authorized any treatment indicated as reasonably necessary for the one-time correction of the service-connected noncompensable condition, but only if:

(A) They were discharged or released, under conditions other than dishonorable, from a period of active military, naval or air service of not less than 180 days.

(B) Application for treatment is made within one year after such discharge or release.

(C) Veterans Administration dental examination is completed within 14 months after discharge or release, unless delayed through no fault of the veteran.

(ii) Those veterans discharged from their final period of service before August 13, 1981, who had reentered active military service within one year from the date of a prior discharge or release, may apply for treatment of service-connected noncompensable dental conditions relating to any such prior periods of service within one year of their final discharge or release.

(iii) If a disqualifying discharge or release has been corrected by competent authority, application may be made within one year after the date of

correction. (Pub. L. 97–35, sec. 2002(a); Pub. L. 97–72, sec. 103(a); 38 U.S.C. 612)

* * * * *

(d) Class II(b). Those having a service-connected noncompensable dental condition or disability and who had been detained or interned as prisoners of war for a period of less than six months may be authorized any treatment as reasonably necessary for the correction of such service-connected dental condition or disability. (Pub. L. 96–22, sec. 102; 38 U.S.C. 612)

(e) Class II(c). Those who were prisoners of war for six months or more, as determined by the concerned military service department, may be authorized any needed dental treatment. (Pub. L. 96–22, sec 102(b)(1); 38 U.S.C. 612)

(f) Class IIR (Retroactive). Any veteran who had made prior application for and received dental treatment from the Veterans Administration for noncompensable dental conditions, but was denied replacement of missing teeth which were lost during any period of service prior to his/her last period of service may be authorized such previously denied benefits under the following conditions:

(1) Application for such retroactive benefits is made within one year of April 5, 1983.

(2) Existing Veterans Administration records reflect the prior denial of the claim.

All Class IIR (Retroactive) treatment authorized will be completed on a fee basis status. (Pub. L. 97–72, sec. 103; 38 U.S.C. 612)

* * * * *

(h) Class IV. Those whose service-connected disabilities are rated at 100% by schedular evaluation or who are entitled to the 100% rate by reason of individual unemployability may be authorized any needed dental treatment. (Pub. L. 96–22, sec. 102(b)(1); 38 U.S.C. 612).

* * * * *

2. In § 17.123a, the introductory paragraph and paragraph (a) are revised to read as follows:

§ 17.123a Eligibility for Class II dental treatment without rating action.

When an application has been made for class II dental treatment under § 17.123(b), the applicant may be deemed eligible and dental treatment authorized on a one-time basis without rating action if:

(a) The examination to determine the need for dental care has been accomplished within the specified time limit after date of discharge or release unless delayed through no fault of the veteran, and sound dental judgment warrants a conclusion the condition originated in or was aggravated during service and the condition existed at the time of discharge or release from active service, and (Pub. L. 97–72, sec. 103(a); 38 U.S.C. 612)

* * * * *

(38 U.S.C. 210(c))

[FR Doc. 83-10327 Filed 4-18-83; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-8-FRL 3219-7]

Air Programs; Approval and Promulgation of State Implementation Plans; Revisions to Wyoming PSD Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: EPA is approving revisions to Wyoming's Prevention of Significant Deterioration (PSD) regulation submitted on April 30, 1981, and February 8, 1982. These revisions, which were proposed for approval on September 21, 1982 (47 FR 41598), satisfy the EPA revised requirements published in 40 CFR 51.24. In addition, EPA is approving a minor change to Wyoming's new source permit regulation submitted on February 8, 1982.

DATE: This action will be effective on June 20, 1983.

ADDRESSES: Copies of the revision are available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday at the following offices:

Environmental Protection Agency, Region VIII, Air Programs Branch, 1860 Lincoln Street, Denver, Colorado 80295

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

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

FOR FURTHER INFORMATION CONTACT: Barry Levene, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 837–3711

SUPPLEMENTARY INFORMATION: On September 21, 1982 (47 FR 41598) EPA proposed to approve revisions to the Wyoming State Implementation Plan (SIP) concerning its PSD plan and a minor revision to its new source review program.

Section 24 of the Wyoming Air Quality Standards and Regulations, the PSD regulation, has been revised to be consistent with the changes to the EPA regulations published on August 7, 1980 (40 CFR 51.24). In addition, Wyoming has revised Section 21 of its regulations to correct an error in an earlier submission.

Having received no comments on this proposal, EPA is approving these revisions.

Under Section 307(b)(1) of the Clean Air Act, petitions for review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 20, 1983. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

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.

This rulemaking is issued under the authority of Section 110 of the Clean Air Act (42 U.S.C. 7410).

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

Dated: March 31, 1983.

Lee Thomas,

Acting Administrator.

PART 52—[AMENDED]

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

Subpart ZZ—Wyoming

In § 52.2620, paragraph (c)(14) is added as follows:

§ 52.2620 Identification of plan

* * * * *

(c) * * *

(14) Revisions to the new source permit requirements in Sections 21 and 24 of the Wyoming regulations were submitted on April 30, 1981, and February 8, 1982.

[FR Doc. 83-10353 Filed 4-18-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[KY-010; A-4-FRL 2309-4]

Approval and Promulgation of Implementation Plans; Kentucky; Alternative Emission Reduction Option (Bubble) for Ashland Petroleum Company

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving an alternative emission reduction plan (bubble) for Ashland Petroleum Company in Kenton County, Kentucky. EPA is taking this action because the alternative emission reduction plan has an emission level as stringent as the applicable volatile organic compound (VOC) regulations. By using the bubble approach on the source, a net benefit above Reasonable Available Control Technology (RACT) level of control will be realized in the ozone nonattainment area.

EFFECTIVE DATE: This action will be effective June 20, 1983. Unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

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

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

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

Library, Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, D.C. 20025

Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, 18 Reilly Road, Building 2, Fort Boone Plaza, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: Douglas Cook, EPA, Region IV, Air Management Branch, at the above listed address and phone 404/881-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: Ashland Petroleum Company, Covington Terminal, applied to the Division of Air Pollution Control on February 12, 1982, for a review under the "bubble concept" pursuant to Kentucky Regulation 401 KAR 50:055(6). Ashland's Covington Terminal is located in Kenton County, Kentucky which is formally designated nonattainment for ozone. On February 3, 1983 (48 FR 5120), however, EPA proposed to approve Kentucky's demonstration that Kenton and the other counties in the Cincinnati metropolitan area are attaining the air quality standards for ozone. The proposed bubble will lower the allowable VOC emissions on the gasoline truck loading vapor recovery unit in lieu of installing secondary seals on all existing external floating roof tanks with a capacity in excess of 151,412 liters (40,000 gallons) which store a petroleum liquid having a vapor pressure greater than 10,342 pascals (1.5 psi). The new emission limits under the bubble are consistent with Kentucky's State Implementation Plan which is based on allowable emissions. Stack tests performed on the carbon adsorption vapor recovery unit associated with the truck loading rack revealed an emission rate of 7.08 milligrams of hydrocarbon per liter (mgHC/l) of gasoline, well below the regulatory limit, per Regulation 401 KAR 61:055, of 80 mgHC/l of gasoline loaded. The proposed bubble will lower the allowable VOC emission rate for this vapor recovery unit to 30 mgHC/l of gasoline loaded, resulting in a net reduction in allowable emissions of 28,740 kg per year (31.08 tons per year).

The achievable emission reduction with installing secondary seals would be 25,329 kg per year (27.92 tons per year). By using the bubble approach on the source, a net benefit above RACT level control of 3,411 kilograms per year (3.76 TPY) will be realized in this ozone nonattainment area.

A public hearing was held on Thursday, August 19, 1982 at 7:00 p.m. at the Covington/Kenton County Municipal Building at 301 Court Street, Covington, Kentucky. No adverse comments were received on the issue of the proposed alternative emission reduction plan and all administrative requirements have been fulfilled. A construction permit for the bottom-fill loading rack with carbon adsorption vapor recovery unit was issued in April of 1981. The operating permit that effects an enforcement mechanism for the bubble was issued in November of 1982 subsequent to the August 1982 public hearing.

Action. EPA has reviewed the submitted material and found it to be consistent with the state administrative requirements and EPA's Emissions Trading Policy proposed on April 7, 1982 (FR 15076). Therefore, EPA is today proposing to approve the Commonwealth's submittal.

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

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

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

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 20, 1983. This action may not be challenged later in proceedings to enforce its requirements. (See Sec. 307(b)(2).)

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

List of Subjects in 40 CFR Part 52

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

(Sec. 110, Clean Air Act (42 U.S.C. 7410))

Dated: March 14, 1983.

John W. Hernandez,

Acting Administrator.

PART 52—[AMENDED]

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

Subpart S—Kentucky

In § 52.920 is amended by adding paragraph (c)(34) as follows:

§ 52.920 Identification of plan.

* * * * *

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

* * * * *

(34) Bubble for Ashland Petroleum Company, Kenton County, submitted on November 18, 1982, by the Kentucky

Department for Environmental Protection.

[FR Doc. 83-10352 Filed 4-18-83; 8:45 am]

BILLING CODE 6560-50-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 5-1

[APD 2800.2 CHGE 30]

General Services Administration Procurement Regulations; Correction

AGENCY: General Services Administration.

ACTION: Final rule; correction.

SUMMARY: In the Federal Register of March 24, 1983, the General Services Administration Procurement Regulations were amended by transferring material from Chapters 5A and 5B to Chapter 5 of Title 41, Code of Federal Regulations. This transfer included a revision of Subpart 5-1.6, but the amendatory language did not reflect that revision. This document corrects that amendatory language.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Hopf, Acting Director, Office of GSA Acquisition Policy and Regulations, Office of Acquisition Policy (202-523-4883).

SUPPLEMENTARY INFORMATION: In FR Doc. 83-7595, beginning on page 12353 in the issue of Thursday, March 24, 1983, the following change should be made: On page 12362, Column 2, paragraph 2I, the amendatory language should read, "Subpart 5-1.6 is revised as follows:"

Dated: April 8, 1983.

Allen W. Beres,

Assistant Administrator for Acquisition Policy.

[FR Doc. 83-10189 Filed 4-18-83; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6369

[CA-13314; CA-7795 WR]

California; Withdrawal for California Islands Wildlife Sanctuary; Revocation of Executive Order No. 5326

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order will withdraw all of the unreserved islands, rocks, pinnacles, and reefs off the coast of California, except for two rocks at Crescent City known as Pelican and Round Rocks, from surface entry, mining, and mineral leasing, to protect the islands for establishment of the California Islands Wildlife Sanctuary. The withdrawal shall remain in effect for a period of 50 years. It will simultaneously revoke Executive Order No. 5326, dated April 14, 1930.

EFFECTIVE DATE: April 1983.

FOR FURTHER INFORMATION CONTACT: Marie M. Getsman, California State Office, 916-484-4431.

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

1. Subject to valid existing rights, the following described public lands, which are under the jurisdiction of the Secretary of the Interior, are hereby withdrawn from settlement, sale, location, or entry, under the general land laws, including the mining laws, 30 U.S.C. Ch. 2, and from leasing under the mineral leasing laws, as a Bureau of Land Management protective withdrawal:

All of the unreserved islands, rocks, pinnacles, and reefs, except two rocks at Crescent City known as Pelican and Round Rocks which remain withdrawn by the Rivers and Harbors Act of March 3, 1899, 30 Stat. 1155, and excepting those lands otherwise reserved and appropriated, situated in the Pacific Ocean off the coast of California, lying above the mean high tide from Oregon to the Mexican Border, for establishment of the California Island Wildlife Sanctuary.

2. This withdrawal shall remain in effect for a period of 50 years from the effective date of this order.

3. This withdrawal does not affect the Secretary of the Interior's discretionary managerial authority under the Outer Continental Shelf Lands Act of August 7, 1953, 67 Stat. 462; 43 U.S.C 1331-1343, as amended by the Act of September 18, 1978, 92 Stat. 629; 43 U.S.C. 1801, or substantially restrict commercial access between primary coastal facilities and the Outer Continental Shelf.

4. Executive Order No. 5326 dated April 14, 1930, which temporarily withdrew all of the unreserved islands, rocks and pinnacles situated in the Pacific Ocean off the coast of California from settlement, location, sale, or entry, for classification and in aid of legislation, is hereby revoked in its entirety.

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

April 11, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-10336 Filed 4-18-83; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6370

[I-18603 I-18630]

Idaho; Revocation of Forest Service Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes two public land orders affecting 29.94 acres of public land withdrawn by the Forest Service for road rights-of-way. This action will restore the lands to operation of the public land laws, including the mining laws. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: May 17, 1983.

FOR FURTHER INFORMATION CONTACT: Nicholas G. Kleng, Idaho State Office, 208-334-1736.

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

1. Public Land Order No. 5271 of October 11, 1972, and Public Land Order No. 5532 of September 8, 1975, which withdrew the lands for road rights-of-way, are hereby revoked insofar as they affect the following described lands:

Boise Meridian, Idaho

(I-4465, PLO 5271)

Blackwell Hump Road No. 226

T. 43 N., R. 2 E.,
Sec. 4, NW¼SE¼;
Sec. 12, SW¼SE¼;
Sec. 13, NW¼NE¼.

A strip of land 66 ft. in width, being 33 ft. in width on both sides of the centerline of Blackwell Hump Road No. 226, over and across the above described subdivisions.

Clarkia-Marble Creek Road No. 321

T. 43 N., R. 2 E.,
Sec. 13, E½NE¼, NW¼NE¼, N½NW¼.
T. 44 N., R. 2 E.,
Sec. 32, W½NW¼.
T. 44 N., R. 3 E.,
Sec. 4, SE¼NE¼.
T. 44 N., R. 3 E.,
Sec. 4, SE¼NE¼.
T. 45 N., R. 3 E.,
Sec. 24, NE¼NW¼, NW¼NE¼;

Sec. 26, S½NE¼.

A strip of land 66 ft. in width, being 33 ft. in width on both sides of the centerline of Clarkia-Marble Creek Road No. 321, over and across the above described subdivisions.

[I-6775, PLO 5532]

Smith Creek Road No. 281

T. 65 N., R. 2 W.,
Sec. 23, Lot 4.

A strip of land 100 ft. in width, being 50 ft. in width on both sides of the centerline of Smith Creek Road No. 281, over and across the above described subdivision.

The areas described above aggregate 29.94 acres in Boundary and Shoshone Counties.

2. At 7:45 a.m. on May 17, 1983, the lands will be open to operation of the public land laws subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable law. All valid applications received at or prior to 7:45 a.m. on May 17, 1983, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands also will be open to location under the United States mining laws, at 7:45 a.m. on May 17, 1983. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Section 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The lands have been and will remain open to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, Federal Building, Box 042, Boise, Idaho 83724.

April 11, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-10335 Filed 4-18-83; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6371

[M-40678]

Montana; Revocation of Stock Driveway Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order as amended, which withdrew 968.78 acres of land for use as a stock driveway. This action will restore 240 acres to operation of the public land laws generally. The balance of 728.78 acres remains segregated from operation of the public land laws generally, including the mining and mineral leasing laws by existing withdrawals.

EFFECTIVE DATE: May 17, 1983.

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

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

1. Secretarial Order dated September 14, 1932, as amended, by Departmental Order of November 4, 1932, withdrawing lands for Stock Driveway Withdrawal No. 233, Montana No. 16, is hereby revoked:

Principal Meridian

T. 23 N., R. 18 E.,
Sec. 24, lots 7 and 8;
Sec. 25, W½E½, E½NW¼, and SW¼;
Sec. 26, SE¼;
Sec. 35, E½.

The area described contains 968.78 acres in Fergus County.

2. At 8 a.m. on May 17, 1983, the public lands described as the S½NE¼ and SE¼ section 35 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 May 17, 1983, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The public lands described in paragraph two have been and continue to be open to location under the United States mining laws and to applications and offers under the mineral leasing laws.

4. The lands described as Section 24, lots 7 and 8; Section 25, NW¼NE¼, NE¼NW¼, remain segregated from operation of the public land laws generally, by Powersite Classification No. 301 of August 31, 1937.

5. The lands, excluding those described in paragraph two, remain withdrawn from operation of the public land laws, including the mining and mineral leasing laws, in accordance with the provisions of the Wild and Scenic Rivers Act of October 2, 1968, 82 Stat. 906; 16 U.S.C. 1271 et seq.

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.

April 11, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-10337 Filed 4-18-83; 8:45 am]

BILLING CODE 4310-84-M

43 CFR Public Land Order 6372

[OR-20284, OR-20286, and OR-20288]

Oregon; Revocation of Stock Driveway Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes three Secretarial orders which withdrew 620 acres of land for stock driveway purposes. This action will restore 600 acres to surface entry. This acreage has been and remains open to mining and mineral leasing. The remaining 20 acres of surface and minerals have been conveyed out of Federal ownership and will not be affected by this action.

EFFECTIVE DATE: May 17, 1983.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Oregon State Office, 503-231-6905.

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

1. The Secretarial Orders of May 6, 1918, November 4, 1918, and September 19, 1919, which withdrew the following described lands for stock driveway purposes are hereby revoked in their entirety:

Willamette Meridian

Stock Driveway No. 12

Deschutes National Forest

T. 20 S., R. 10 E.,
Sec. 33, W½NE¼SW¼.

Stock Driveway No. 18

T. 3 S., R. 14 E.,
Sec. 10, SE¼SE¼;
Sec. 11, N½S½ and SW¼SW¼;

Sec. 12, N½S½.

Stock Driveway No. 96

T. 3 S., R. 14 E.,
Sec. 12, N½S½.
T. 5 S., R. 15 E.,
Sec. 27, SE¼SE¼;
Sec. 34, E½E½.

The areas described aggregate 620 acres in Deschutes and Wasco Counties.

2. The W½NE¼SW¼ of sec. 33, T. 20 S., R. 10 E., has been conveyed from United States ownership and will not be restored to operation of the public land laws, including the mining laws and mineral leasing laws.

3. At 9:30 a.m. on May 17, 1983, the lands described in paragraph 1, except as provided in paragraph 2, will be open to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:30 a.m. on May 17, 1983, will be considered simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. The lands described in paragraph 1, except as provided in paragraph 2, have been and remain open to location under the United States mining laws and to applications and offers under the mineral leasing laws.

Inquiries concerning the lands should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

April 11, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-10338 Filed 4-18-83; 8:45 am]

BILLING CODE 4310-84-M

Proposed Rules

Federal Register
Vol. 48, No. 76
Tuesday, April 19, 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

Food and Nutrition Service

7 CFR Part 282

[Amdt. 249]

Food Stamp Program; Work Registration/Job Search Demonstration Project

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed Rule.

SUMMARY: This rulemaking would expand the Department of Agriculture's currently operating Food Stamp Program's Work Registration/Job Search Demonstration Project. The expanded project would test additional approaches for implementing the work registration and job search provisions established in the 1977 Food Stamp Act, as amended. The new approaches would be evaluated by an independent contractor to determine their effectiveness and cost efficiency.

DATE: Comments must be received on or before May 19, 1983, to be assured of consideration.

ADDRESS: Comments should be submitted to Claire Lipsman, Director, Program Planning, Development and Support Division, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at the Park Office Center, 3101 Park Center Drive, Alexandria, Virginia, 22302, Room 706.

FOR FURTHER INFORMATION CONTACT: If you have any questions, please contact Marilyn Carpenter, Chief, Legislative Policy Planning and Demonstration Branch, Program Planning, Development and Support Division, Family Nutrition Programs, Food and Nutrition Service, Alexandria, Virginia. Phone (703) 756-3383.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1, and has been classified "not major." The proposed rule would not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Because this rule would not have a major effect on the business community, it would not result in significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The rulemaking has also been reviewed with regard to the requirements of the Regulatory Flexibility Act, Pub. L. 96-354. Robert E. Leard, Administrator of the Food and Nutrition Service (FNS), has certified that the rule would not have a significant economic impact on a substantial number of small entities. This proposed action may have a limited impact on small businesses and organizations to the extent that additional job inquiries may be made by food stamp work registrants in those sites selected for demonstration operations. The primary impact would be on State governments (or county governments within States to the extent that they administer the Food Stamp Program) which have volunteered to conduct the demonstration project and on food stamp work registrants within the project sites.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping provisions that are included in this rule have been approved by the Office of Management and Budget (OMB) and have been assigned No. 05850254. The Department received OMB approval on January 20, 1983, to extend the time period to which these requirements apply.

Background

Final regulations published jointly by the Departments of Agriculture and Labor on September 18, 1981, (46 FR 46282), established procedures for conducting a Food Stamp Program Work Registration/Job Search Demonstration Project. The project was designed to examine several alternative approaches for implementing the work registration and job search requirements contained in the Food Stamp Act of 1977, as amended. The goals of this project were: (1) To identify efficient and effective methods for implementing the food stamp work requirements (thus increasing job placements, and decreasing dependence on food stamp assistance); (2) To deter from participation those able but unwilling to work; and (3) To improve program administration. The operational testing of four approaches (demonstration models) was initiated between October 1981 and March 1982. Under three models, State welfare agencies and State Employment Security Agencies (SESA's) shared administrative responsibilities for work registration and job search procedures. A fourth model involved administration of the ongoing work registration and job search requirements solely by the State welfare agency.

Since that time, the Department of Agriculture has come to believe that work registration and job search activities should be more closely integrated with other food stamp program activities. To validate this concept, the Department is expanding the existing Work Registration/Job Search Demonstration Project to evaluate additional State welfare agency administered approaches to applying the work requirements. The proposed rule would delete the regulatory provision that authorizes applications from SESA's to conduct work registration/job search demonstration projects, and that requires selection of project operators by FNS and the Department of Labor. It would also place sole responsibility for monitoring the demonstration projects with FNS.

On August 11, 1982, the Food and Nutrition Service issued a Request for Proposal (RFP) (FNS 82-177 JD) seeking contractors for such a demonstration. The RFP established three structured work registration/job search procedures. In addition, sponsors were encouraged to submit alternative designs reflecting innovative and creative approaches to job placement. As with the initial demonstration

project, the RFP requested, for evaluation purposes, that sites establish an experimental design; work registrants would be randomly assigned to either a treatment or control group. Those in the treatment group would be subject to the work registration and job search requirements operating at the site. Those in the control group would not be subject to either a work registration or job search requirement. Additionally, the RFP established that there would be no SESA involvement unless the State welfare agency chose to subcontract with them for services.

Demonstration Provisions

As a result of the RFP, seven contractors were selected as project operators. These contractors will test four approaches (demonstration models) to administering the work requirements. The Job Finding Club and Model G, discussed below, were established in the RFP. Models H and I, discussed below, were alternative approaches designed and submitted by contractors as requested in the RFP. All four models will establish the random assignment procedures discussed in the RFP.

The expanded demonstration project will operate for a period of approximately 18 months. Early in 1983, sites implemented those parts of the project which are already authorized by current program regulations. The remaining aspects will be implemented on a date specified in the final rulemaking.

Job Finding Club (Model B)

The Job Finding Club approach is Model B in current demonstration project rules and is administered by the SESA. Job Finding Club procedures require work registrants to treat seeking employment as a full-time job. While specific procedures for Job Finding Clubs vary, all offer facility support, i.e., telephone, photocopying, supplies, group support, and personal counselling. Model F of current demonstration project rules permits a State welfare agency to assume the responsibilities of the SESA in administering the regular work registration/job search provisions. 7 CFR 282.13(b) permit the Secretary to combine elements in various models. Under this authority, the Department is authorizing Job Finding Clubs which are administered by the State welfare agency. This proposed rule would amend the Job Finding Club provisions to clarify this approach. Additionally, current demonstration project rules state that failure to report to the Job Finding Club on more than two occasions per month without good cause would subject the household to disqualification. This proposed rule would delete the language "on more than two occasions per month" since this requirement may vary by site. Households, however, would continue to be provided with a second opportunity to comply as specified in § 273.7(h)(2).

Expanded Job Search (Model G)

Prior to 1982 legislation, the Food Stamp Act of 1977, as amended, required only able-bodied food stamp recipients to engage in job searches. The 1982 Food Stamp Act Amendments permit State agencies the option of applying job search requirements at the time households apply for participation in the Program. As established in the RFP, those sites selected to operate the Model G demonstation project would require proof of compliance with the applicant job search requirement prior to certification. The Department believes that testing this statutory provision in this manner would provide information which may be helpful in its application in the regular program. The proposed rule would require that applications continue to be processed within the timeframes established by 7 CFR 273.2(g). The State agency, however, would be permitted to delay disposition of the application pending proof of compliance with the applicant job search requirement. Delays would be processed in accordance with the procedures established in § 273.2(h)(2) for delays caused by the household. After certification, work registrants would be subject to the regular program job search requirements.

In addition, sites operating Model G would be permitted to require work registrants to perform job search activities continuously; the number of job contacts would be established by each State agency based upon factors such as the local unemployment rate and would be contingent upon FNS approval. The current program rules (7 CFR 273.7(f)(2)) require that work registrants make 24 job contacts within an eight-week period. The Department does not want to establish standards for use in this demonstration project so as to allow State agencies maximum flexibility in the testing of the continuous job search requirement. This proposed flexibility will aid the Department in determining what constitutes an appropriate number of required job contacts.

Job Search/Job Finding Club (Model H)

This model combines the features of the ongoing job search requirements and Model B. Work registrants are required to conduct job search. If the work registrant is unable to find a job through the job search process, he or she is enrolled in a Job Finding Club. Although this combination of features is authorized by current demonstration project regulations, this approach would be codified by this proposed rule.

Job Finding Club/Workfare (Model I)

Political subdivisions operating a Food Stamp Workfare Program have the option under current Workfare requirements (7 CFR 273.22) of requiring food stamp work registrants to job search for a period of up to thirty days prior to their participating in Workfare. Those sites administering Model I under the expanded demonstration project are operating a workfare program as a part of their regular program operations and the Job Finding Club as an alternative to the job search activity. Under Model I, work registrants participate in a Job Finding Club for three weeks. If the work registrant is unable to find a job while participating in the Job Finding Club, he or she is referred to a workfare site.

Additional Provisions

As proposed in this rule, the expanded demonstration project would also incorporate statutory provisions related to work registration, job search and voluntary quit which were established under the 1981 food Stamp Act Amendments (Pub. L. 97-98, Stat. 1282, enacted December 22, 1981) and the Food Stamp Act Amendments of 1982 (Pub. L. 97-253, enacted September 8, 1982). In anticipation of regulatory implementation in the regular Program, the Department believes that these statutory provisions should be incorporated into this demonstration project upon implementation of the final rule. Such incorporation is necessary to best study the impact of the various work registration/job search models on the regular Program. A brief explanation of the provisions follows:

Reregistration for Employment

Current program regulations (7 CFR 273.7(a)) require households who are not exempted by 7 CFR 273.7(b)(1) to register for employment at the time of application and once every six months after initial registration as a condition of eligibility. This proposed rulemaking would require reregistration once every twelve months after initial registration.

Voluntary Quit

Current program regulations (7 CFR 273.7(n)) state that where the head of an applicant household quits his/her most recent job without good cause, the entire applicant household shall not be eligible

to participate in the Food Stamp Program for a period of 60 days beginning with the month of the quit. This proposed rulemaking would require that where the head of a participating household voluntarily quits his/her job without good cause the entire household be disqualified from participation. Additionally, demonstration sites would extend the definition of voluntary quit without good cause (and the attendant period of ineligibility) to include Federal, State, or local government employees who have been dismissed from their jobs because of participation in a strike against the government entity involved.

Noncompliance/Sanctions

Current program rules (7 CFR 273.7(g)) provide that if a household member fails to comply with work registration requirements, including the job search requirements, then the entire household is ineligible to participate in the Food Stamp Program for 60 days. Eligibility may be reestablished during a disqualification period if the member who caused the disqualification complies with or becomes exempt from the work registration requirement of is no longer a member of the household. The 60 day timeframe is established by the Food Stamp Act of 1977, as amended, for voluntary quit. While Congress has never specified the length of the general work registration penalty, the Department has always applied the same disqualification penalty period to all components of the work registration requirements. This proposed rule would change the 60 day disqualification period for voluntary quit to 90 days, and extend the disqualification period for noncompliance with all other work registration requirements, including job search, to 90 days.

Exemptions from Work Registration

Current rules (7 CFR 273.7(b)(1)(iv)) exempt from the work registration requirement a parent or other household member who is responsible for the care of a dependent child under twelve years of age or an incapacitated person. This proposed rule would require demonstration sites to exempt only those responsible for the care of either a child under six or an incapacitated person. Current program rules (7 CFR 273.7(b)(1)(v)) also exempt a parent or caretaker of a child under 18 in a household where another parent is registered for work. Under this proposed rulemaking demonstration sites would require that a previously exempt parent begin seeking employment when the youngest child becomes six.

List of Subjects in 7 CFR Part 282

Food stamps, Government contracts, Grant programs—social programs, Research.

Accordingly, this proposed rule would amend Part 282 as follows:

PART 282—DEMONSTRATION, RESEARCH, AND EVALUATION PROJECTS

In § 282.13:

1. Paragraph (c) is redesignated as paragraph (c)(1) and a new paragraph (c)(2) is added;

2. In paragraph (d), the second and third sentences are removed and a new second sentence is added in their place;

3. (a) In paragraph (e)(1) remove the word "five" in the last sentence.

(b) Paragraph (e)(6) is revised.

(c) New paragraphs (e)(7), (e)(8), and (e)(9) are added;

4. (a) In introductory paragraph (f), a new sentence is added to the end of the paragraph.

(b) In paragraph (f)(2)(i), remove the words "on more than two occasions per month," from the second sentence.

5. Paragraphs (h), (i), and (j) are redesignated as paragraphs (i), (j), and (k) respectively, and a new paragraph (h) is added; and

6. Newly redesignated paragraph (k) is revised.

The revisions and additions read as follows:

§ 282.13 Work Registration/Job Search Demonstration Project.

* * * * *

(c)(1) *Regulatory requirements.* * * *

(2) *Other requirements.* Other provisions which shall govern the operation of this project include:

(i) *Reregistration for employment.* Household members not exempt by § 273.7(b)(1) shall be required to reregister for employment once every 12 months as a condition of eligibility.

(ii) *Voluntary quit.* Participant households whose primary wage earners voluntarily quit their most recent jobs without good cause shall be determined ineligible for participation in the Program. Additionally, employees of the Federal government, or of a State or local government, who participate in a strike against such government and are dismissed from their jobs because of participation in the strike shall be considered to have voluntarily quit their jobs without good cause.

(iii) *Noncompliance/sanctions.* Households containing members who have refused or failed without good cause to comply with any work registration or job search requirement shall be determined ineligible to participate for 90 days.

(iv) *Work registration exemptions.* Household members responsible for the care of children shall be considered exempt only when the children are under six years old.

(d) *Areas of operation.* * * * The expanded Work Registration/Job Search Project shall be operated in seven project sites for a period of approximately eighteen months beginning no earlier than January 1, 1983.

(e) *Demonstration Models.* * * *

(6) At those sites chosen to operate Model F, the basic requirements for work registrants shall be unchanged. System responsibilities, however, shall be changed to the extent that ongoing responsibilities assigned to the SESA in § 273.7 shall be assumed by the State welfare agency.

(7) At those sites chosen to operate Model G, work registrants in the treatment group shall be required to conduct applicant job search as discussed in paragraph (h) of this section and shall be subject to the ongoing job search requirements. System responsibilities shall be changed to the extent that ongoing responsibilities assigned to the SESA in § 273.7 shall be assumed by the State welfare agency. Additionally, sites operating Model G may require each work registrant to contact potential employers throughout the work registrant's certification period. This continuous job search requirement shall be based on the capabilities and characteristics of the participant, including his or her age, physical condition, ability or inability to speak English, current enrollment in job training programs, and recent employment history, as well as the distance he or she lives from potential employers and the job market situation in the area. The number of required contacts shall be determined by the State welfare agencies with prior FNS approval.

(8) At those sites chosen to operate Model H, work registrants in the treatment group shall be subject to the ongoing job search requirements and to the requirements of the Job Finding Club as discussed in paragraph (f) of this section.

(9) At those sites chosen to operate Model I, work registrants in the treatment group shall be subject to the requirements of the Job Finding Club as discussed in paragraph (f) of this section. If a work registrant is unable to find a job while participating in the Job Finding Club, he or she will be required

to participate in the Workfare Program as discussed in s227.22.

(f) *Job Finding Club* * * * System responsibilities at certain sites shall be changed to the extent that ongoing responsibilities assigned to the SESA in this paragraph shall be assumed by the State welfare agency.

* * * * *

(h) *Applicant Job Search*

(1) The State agency may require Program applicants to conduct job search. Failure to comply with the applicant job search requirement, without good cause, shall result in a household's application being denied for a period of 90 days beginning with the date of application. The household shall be advised of the reason for the denial and of its right to reapply and/or to request a fair hearing. If the applicant's noncompliance is determined after certification, then disqualification shall be calculated as for any other participating household as described in § 273.7(g).

(2) The State agency shall process all applications in accordance with the timeframes established in § 273.2(g). The State agency, however, may delay disposition of the application pending receipt of proof of compliance with the applicant job search requirement. In this situation, the application would be processed in accordance with the procedures discussed in § 273.2(h)(2) for delays caused by the household.

* * * * *

(k) *Monitoring and evaluation.* FNS shall establish procedures for monitoring State agencies' compliance with the requirements of § 272.13. FNS shall assume primary monitoring responsibility for all site operations. The evaluation of the project shall be conducted by an independent contractor. The State agency shall, upon reasonable notification, provide the evaluation contractor with access to all information pertaining to project operations.

(91 Stat. 958, as amended (7 U.S.C. 2011–2029))

(Catalog of Federal Domestic Assistance Program, No. 10.551 Food Stamps)

Dated: April 12, 1983.

John H. Stokes III,

Acting Administrator Food and Nutrition Service.

[FR Doc. 83-10183 Filed 4-18-83; 8:45 am]

BILLING CODE 3410-30-M

Soil Conservation Service

7 CFR Parts 620, 622, and 623

Water Resources; Watershed Projects

AGENCY: Soil Conservation Service (SCS), USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule prescribes the general procedures for implementation of the Watershed Protection and Flood Prevention Program under the authority of Pub. L. 83–566, and those under the authority of Pub. L. 78–534. The proposed rule revises the rules for Pub. L. 83–566 being carried out under the above authority which were published March 19, 1975 (40 FR 12475).

DATE: Comments are due June 20, 1983. All Comments received during the review period will be considered during preparation of the final rules.

ADDRESS: Interested persons are invited to submit written comments to Joseph W. Haas, Deputy Chief for Natural Resource Projects, Soil Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013 (202) 447–4527.

FOR FURTHER INFORMATION CONTACT: John W. Peterson, Director, Project Development and Maintenance, Soil Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013 (202) 447–3527.

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Secretary's Memorandum 1512–1 to implement EO 12291, and has been classified "nonmajor."

It will not affect the national economy by $100 million or more, nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Peter C. Myers, Chief, Soil Conservation Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

There will be no major increase in cost or prices for consumers, individuals, industries, Federal, State or local government agencies, or geographic regions.

The rule will govern a program of technical and financial assistance in which participation is voluntary. Thus, it will not impose an unnecessary regulatory, information or compliance burden on small businesses, organizations, or governmental jurisdictions as defined in the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601).

General

On October 3, 1980, the Soil Conservation Service published in the **Federal Register** (45 FR 65603) a notice of intent to review regulations, policies, and procedures for implementing the Watershed Protection and Flood Prevention program under the authority of Pub. L. 83–566, as amended. All written comments were considered in developing the proposed rule. Other comments and suggestions not incorporated at this time will be given further consideration, along with the comments received on this proposed rule, during preparation of the final rules and regulations.

Pub. L. 83–566 and Pub. L. 78–534 authorize the Secretary of Agriculture to cooperate with State and local agencies in the planning and carrying out works of improvement for flood prevention; for the conservation, development, utilization, and disposal of water; and for the conservation and proper utilization of land in watershed or subwatershed areas, not exceeding 250,000 acres. The Secretary of Agriculture has delegated authority for administration of the Act to the Chief of the Soil Conservation Service (SCS) except for responsibilities assigned to the Farmers Home Administration (FmHA) and the Forest Service (FS) of the U.S. Department of Agriculture (USDA). The Administrator of FmHA has responsibility for administering Sec. 8 of the Act and those functions with respect to repayment obligations under Sec. 4. The Chief of FS administers the forestry aspects of the Act under such general program criteria and procedures as may be established by the Chief of SCS.

The rules found in Parts 620 and 623 have been incorporated in the proposed revision of Part 622 and therefore are being reserved.

List of Subjects in 7 CFR Part 622.

Watersheds, Flood prevention, Technical assistance, Soil conservation, Grant programs—natural resources, Loan programs—natural resources.

Dated: April 13, 1983.

David G. Unger,

Associate Chief, Soil Conservation Service.

Accordingly, Chapter VI of Title 7 would be amended by removing and

reserving Parts 620, and 623 and by revising Part 622 to read as follows:

PART 622—WATERSHED PROJECTS

Subpart A—General

Sec.
622.1 Purpose.
622.2 Scope.
622.3 Relationship to other agencies.
622.4 Guidelines

Subpart B—Qualifications

622.10 Sponsors.
622.11 Eligible Watershed projects.

Subpart C—Application Procedure

622.20 Application.
622.21 State agency approval.

Authority: Pub. L. 83–566, 68 Stat. 666 as amended (16 U.S.C. 1001 et. seq.); Pub. L. 78–534, 58 Stat 889, 33 U.S.C. 701b–1.

Subpart A—General

§ 622.1 Purpose.

This rule sets forth the general policies for planning and carrying out watershed projects under Pub. L. 83–566, 68 Stat. 666 (16 U.S.C. 1001 et. eq.) and flood prevention projects under Pub. L. 78–534, 58 Stat. 889 (33 U.S.C. 701 b–1).

§ 622.2 Scope.

(a) To assist sponsors in preparing and carrying out watershed plans, the Soil Conservation Service (SCS) will conduct investigations and surveys, with the cooperation and assistance of other Federal agencies, to:

(1) Determine the extent of watershed problems and needs, and

(2) Set forth viable alternative solutions consistent with local, regional, and national objectives, including an alternative solution which makes the greatest net contribution to national economic development.

(b) Alternatives will consist of either land treatment, nonstructural or structural measures, or combinations thereof that will help accomplish one or more of the authorized project purposes.

(c) Authorized project purposes are watershed protection, conservation and proper utilization of land, flood prevention, agricultural water management including irrigation and drainage, public recreation, public fish and wildlife, municipal and industrial water supply, hydropower, water quality management, ground water supply, agricultural pollution control, and other water management.

(d) After a final plan for works for improvement is agreed upon between SCS and the sponsors and the approval processes are completed, subject to the availability of funds and the budgeting and fiscal policies of the President, SCS will provide technical, financial, and credit assistance to install the project.

§ 622.3 Relationship to other agencies.

SCS will coordinate with other water resource development agencies on projects that may cause competition among authorities. Agreement will be reached on which authority would be most applicable.

§ 622.4 Guidelines.

Guidelines for carrying out this program are contained in miscellaneous instructions, manuals, and handbooks issued by the Soil Conservation Service, Regualtions for Implementing NEPA (40 CFR 1500–1508) issued by the Council on Environmental Quality, and Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies issued by the Water Resources Council. Watershed projects are to be planned and carried out in a way that will conform to conditions mandated by applicable laws, Executive Orders, and codified rules.

Subpart B—Qualifications

§ 622.10 Sponsors.

(a) Watershed projects are sponsored by one or more local organizations qualifying as sponsors. All watershed plans shall be sponsored by entities legally organized under State law or by any Indian tribe or tribal organization having the authority to carry out, maintain, and operate works of improvement. Those plans that incorporate the use of nonstructural or structural measures shall be sponsored by organizations that, severally or collectively, have:

(1) The power of eminent domain,

(2) The authority to levy taxes or other adequate means of financing their share of the cost of the project.

(b) To receive Federal assistance for project installation, sponsors must commit themselves to use their powers and authority to carry out the project as planned.

§ 622.11 Eligible watershed projects.

(a) To be eligible for Federal assistance, a watershed project must:

(1) Meet the definition of a watershed area.

(2) Not exceed 250,000 acres in size.

(3) Not include any single structure that provides more than 12,500 acre-feet of floodwater detention capacity nor more than 25,000 acre-feet of total capacity.

(4) Have significant land or water management problems that can be solved or alleviated by measures for watershed protection, flood prevention, drainage, irrigation, recreation, fish and wildlife, municipal or industrial water supply, or other water management.

(5) Produce substantial benefits to groups of landowners, to communities, and to the general public.

(6) Cannot generally be installed by individual landowners or small groups of landowners with the aid of other available cost-sharing assistance.

(7) Have strong local citizen support.

(8) Have greatest net national economic benefits (for water resource projects) unless an exception is granted by the Secretary.

(b) Works of improvement that may be included in a watershed project are those that:

(1) Contribute to reducing floodwater, erosion, and sediment damages.

(2) Further the conservation, development, utilization, and disposal of water and the conservation and proper utilization of land.

(3) Constitute needed and harmonious elements in the comprehensive development of the river basin involved.

Subpart C—Application Procedure

§ 622.20 Application.

Sponsors shall follow State developed procedures for coordination of proposed Federal financial assistance and also USDA's 7 CFR 3015 in applying for Pub. L. 566 assistance. Standard forms for Federal assistance or other approved forms may be obtained from SCS State, area, or field offices. Appropriate public involvement shall be carried out as a part of this process.

§ 622.21 State agency approval.

The governor or State agency will approve or disapprove the application. If disapproved, no further action is required of SCS. If approved or not disapproved within 45 days, the application shall be sent to the SCS state conservationist. After the state conservationist has determined that the application is legally valid, he will notify the sponsor of receipt of the application.

[FR Doc. 83-10466 Filed 4-18-83; 8:45 am]
BILLING CODE 3410-16-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-35]

Union of Concerned Scientists; Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of Petition for Rulemaking.

SUMMARY: The Nuclear Regulatory Commission is denying a petition for rulemaking which requested that the Commission amend its emergency planning rules for nuclear power plants so that the results of the offsite emergency preparedness exercise held prior to full-power operation would be litigable in the operating license proceeding. The Commission is denying the petition because the requested amendment is unnecessary, contrary to sound administrative practice, and would add regulatory delays to the Commission's licensing process without a corresponding increase in public health and safety.

FOR FURTHER INFORMATION CONTACT: William M. Shields, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Phone: 301–492–8683.

SUPPLEMENTARY INFORMATION:

I. Background

On November 18, 1982, the Commission published in the **Federal Register** (47 FR 51889) a notice announcing the receipt of a petition for rulemaking filed by the Union of Concerned Scientists (UCS). The Commission indicated that the principal thrust of the petition was to ensure, via amendment of the Commission's emergency planning regulations in 10 CFR 50.47, that the results of the pre-operational offsite emergency preparedness exercise could be litigated in the full-power operating license proceeding.

The UCS petition seeks to reverse the effect of an amendment to 10 CFR 50.47 promulgated by the Commission on July 13, 1982 (47 FR 30232; notice of proposed rulemaking published December 15, 1981, 46 FR 61134). That amendment, in relevant part, added a sentence to 10 CFR 50.47(a)(2) which reads as follows:

> Emergency preparedness exercises (required by paragraph (b)(14) of this section and Appendix E, Section F of this part) are part of the operational inspection process and are not required for any initial licensing decision.

The effect of this amendment was to make clear that the record in the full-power proceeding could be closed, and a licensing decision rendered, prior to the offsite emergency preparedness exercise. This exercise, however, had to be held prior to authority for full-power operation for the facility as had always been the case.

Presently pending before the Court of Appeals for the District of Columbia Circuit is UCS' direct challenge to the 1982 amendments, filed September 10, 1982. *(Union of Concerned Scientists v. NRC,* Docket No. 82–2053). The Commonwealth of Massachusetts has moved to intervene in this action, and also filed comments on the petition for rulemaking. Briefing in this case has been held in abeyance so that administrative action on the petition for rulemaking could be completed. A main concern of UCS was the NRC, by its July 1982 amendments, intended to alter the way emergency planning issues are litigated generally in license proceedings. At a meeting held November 3, 1982, between NRC and UCS representatives, NRC stated that, except for the exercise issue, the NRC did not intend this rule change to affect the way full-power proceedings were conducted. It was generally agreed that the principal thrust of the petition concerned the litigation of "effects in on-site and off-site emergency planning identified as a result of pre-operational emergency preparedness exercises." 47 FR 51889. The petition notice therefore highlighted this issue in seeking public comment.

II. Public Comments

A. Description of Comments Received on Petition

Seventy-eight comments were received on the UCS petition, representing a wide variety of opinions and sources. By source, the comments break down as follows: public interest groups—22, industry—19, States—3, Federal agencies—2, counties—1, universities—1, attorneys (other than those representing clients)—2, private citizens—28 (representing 93 persons). These comments in many cases focus on the same issues presented in the earlier rulemaking on the same subject, where 40 comments were received. In all, then, the Commision has received and considered 118 comments on the UCS petition.

In view of the large number of comments, pro and con, it is not feasible to respond to each individually. Instead, the analysis below will be organized by issue. The factors cited by commenters in favor of the UCS petition will be stated, each followed by a statement of the Commission's position. Because the Commission is denying the petition, it is not necessary for the Commission to respond to each of the arguments offered by commenters opposing the petition. Some of their arguments have been incorporated into the Commission's responses below.

All public comments—for this proceeding and for the previous rulemaking—are available for public inspection in the Commission's Public Document Room, 1717 H Street N.W., Washington, D.C.

B. Response to Public Comments

Issue 1: Emergency planning exercises should be subject to hearings before a license is issued because the exercise is a vital indicator of the actual state of emergency preparedness.

Commission response: The commission agrees that the full-scale offsite exercise is one important indicator of the actual state of emergency preparedness. For this reason, the Commission continues to require that the exercise be conducted, and significant deficiencies corrected or mitigated, before full-power operation is authorized for the facility.

From this it does not follow, however, that any benefit is to be gained from delaying the operating license hearing, as a matter of course, to incorporate the results of this exercise in the full-power operating license proceeding. As to all matters of public health and safety, the licensing boards' findings are predictive in that they often are based upon the design of the facility, the qualifications of the utility's management and operational staff, inspections, performance specification, etc., rather than demonstrated preformance. At the time the licensing board issues its decision authorizing a full-power license, many major plant systems have not been fully tested at or near the full-power operating levels necessary to show full-system performance. The full-scale exercise is analogous to the evaluation of plant systems at operating power levels during power ascension testing. Where problems are discovered, they are addressed before full commercial operation is achieved. On the other hand, the applicant's emergency plan is akin to the design of the facility. The task of the licensing board confronted with contested emergency planning and preparedness issues is to decide whether the plan meets the Commission's regulations as set out in 10 CFR 50.47 and Appendix E to Part 50 and to predict whether it can be implemented successfully. *See 47 FR at 30235.* As was stated above, both decisions are fully litigable before the board. This would include litigation of the planning process itself (i.e. the various technical and other judgments of the planners and the reviewers that underlie the plan itself and the predictions of implementation capability). The board may require changes or additions to the plan based upon the testimony presented. The 1982

amendment here challenged by UCS was only intended to affect the way in which emergeny planning issues are litigated by clarifying that the results of the exercise need not be litigated.

The full-scale offsite exercise is actually an indicator of two factors: the state of emergency preparedness at the time the exercise is conducted, and whether the emergency plan and the planning process are fundamentally sound. If the outcome of the exercise showed that the plan and the underlying judgments about its adequacy and capability of implementation were seriously flawed—as opposed to details of its implementation in that exercise not reflecting on the overall adequacy of the plan and its capability of implementation—reopening of the hearing record might be appropriate, coupled, of course, with delay of the full-power authorization. This matter was fully explained in the rulemaking notices for the amendment.

There are sound policy reasons for removing the full-scale exercise from the operating license proceeding. While these reasons were stated by the Commission in the previous rulemaking, they will be restated here for clarity. Contrary to the view of many comments supporting the UCS petition, the action was not taken merely to further limit the scope of the operating license proceeding. The Commission acknowledges that the public can play an important part in offsite emergency planning by participating in the operating license proceeding. This will continue to be the case. The Commission also believes that it is important, however, that the full-scale exercise be held as close in time as possible to commercial operation of the facility. This is necessary so that the licensee personnel who will be responsible for the commercial operation of the facility will be present at the site, familiar with the plant and its environs, and trained to carry out the emergency plan. As one moves back in time from commercial operation, these personnel will not, for the most part, be present. In addition, certain instrumentation to be relied on in emergencies may not be fully operational or calibrated. The safety of the plant would be better served by an exercise utilizing those licensee personnel who would have to carry out emergency procedures once the plant is licensed for commercial operation.

This being the case, it is clearly impractical to hold the full-power proceeding record open solely for the purpose of litigating the results of the full-scale offsite exercise held at a time close to commercial operation. Even with the use of expedited procedures, months could be consumed while the results of the exercise are analyzed, testimony prepared, hearings held, findings made, and so on. This delay would occur without a commensurate safety benefit in the ordinary case. It is important, of course, to correct or resolve problems which are discovered as a result of the exercise. In most cases, this can be done prior to full power authorization. If the exercise shows serious problems that must be remedied, the Commission can delay full-power authorization until such problems are rectified. To the extent there are material facts in dispute, litigants in NRC proceedings would likely be heard on the impact of such serious defects on the NRC's ability to decide there is reasonable assurance that the plant could operate safely. As the Commission has stated on prior occasions, no facility will be permitted to achieve commercial power levels when there is doubt that the public health and safety will be protected in the event of an accident.

Moreover, deficiencies in the full-scale offsite exercise would not be suitable subjects for the adjudicatory setting. As was explained above, the function of the licensing board is to determine whether the emergency planning efforts reflected in the plan and its underlying basis and review meet the Commission's regulations. If some detail of a plan, *e.g.*, a hard telephone link to a State emergency office, does not operate properly during the exercise, the appropriate course of action is to remedy the problem by concrete action, not hold a hearing and hear the testimony of experts on why the system failed on the day in question. If it should occur, however, that some key aspect of the plan turns out to be inadequate or unworkable, or the judgments reflected in the planning process are untenable, or major revisions will be necessary, the hearing could be reconvened upon a showing that the Commission's standards for reopening have been met. This could be done, however, only where it is questionable that the Commission's regulations have been met. Where appropriate, any person may request that the Commission institute a proceeding to take immediate licensing action under 10 CFR 2.206. Such action could include, in extraordinary circumstances, suspension of the license pending correction of the deficiency.

Issue 2: Emergency planning issues generally will be removed from licensing adjudications under the current rule.

Commission Response: The Commission responded in depth to this contention in the notice of final rulemaking published July 13, 1982 (47 FR at 30233). The applicant for an operating license is required by 10 CFR 50.47 to submit a complete emergency plan for the facility. All aspects of the planning process may be litigated in the operating license proceeding. For example, one can assert that the planning standards in 10 CFR 50.47(b) have not been met. In the Commission's view, this does not constitute removal of emergency planning from the licensing process.

As was explained above, and to be very clear, the only aspect of emergency planning removed from the proceeding is the full-scale offsite exercise. This was done for reasons which will be explained in the response to the next issue. (See also the notices of proposed and final rulemaking in this proceeding.)

Issue 3: The public has no recourse to challenge decisions made following the exercise if the hearing record is already closed.

Commission Response: The only aspect of the Commission's procedures which was altered by the 1982 amendment at issue here was the inclusion, as a matter of course, of the results of the full-scale offsite exercise in the full-power operating license proceeding. The rule changes did not affect public participation in any other way under NRC regulations. It is true, as UCS asserts, that the other avenues of public intervention (*e.g.*, motions to re-open a hearing, petitions under 2.206) are conditioned by the need to show that such licensing actions are warranted by the facts in each case. This is nonetheless true of any other aspect of the facility which is tested prior to, or even after, achievement of commercial power levels. The comments raise no intrinsic safety reason which distinguishes the results of the offsite exercise from the result of testing the reactor coolant system at full capacity. If, in either case, minor problems were discovered, correction is needed but actions such as a re-opening of the hearing or suspension of the license would not be warranted. Major deficiencies in an exercise would be addressed by the NRC prior to full power authorization, but in any event the public could seek to participate and would be granted the opportunity to do so in appropriate circumstances.

The Commission's objective in the 1982 amendment was to improve the conduct of exercises by placing them as close in time to commercial operation as possible, not to eliminate public

recourse in the event an exercise demonstrates serious defects in the emergency plan or planning process. The amendment was carefully limited to provide this result.

Issue 4: A utility might submit a faulty plan in the absence of public scrutiny in the hearing context, thus jeopardizing public safety.

Commission Response: The plan is addressed in the hearing process. An applicant for an operating license is required by NRC regulations (10 CFR 50.47 Appendix E) to submit an emergency plan which complies with the regulations and which conforms to other regulatory guidance supporting the regulations. The licensing board must be able to find that the existing plan and planning process do in fact, meet the regulations or whether, on the other hand, there is cause to withhold authorization of a license until suitable planning was demonstrated. Neither the petitioner nor commenters have shown in what way the Commission's action resulted in a diminution of safety in respect to emergency planning. In the Commission's veiw, it is not enough to assert, without more, that removal of a limited subject from the adjudicative phase of the licensing process necessarily equals a loss of protection of the public health and safety, or implies a loss of the public's right to recourse where the facts justify extraordinary licensing action.

Issue 5: The current text of 10 CFR 50.47(c) appears to allow submission of offsite plans after the record has closed. If so, this would remove such plans entirely from public scrutiny in view of the high standard which must be met to reopen a hearing.

Commission Response: This concern is the result of confusion over the work "should" in the Statement of Considerations which accompanied the 1982 amendments:

The proposed rule does not eliminate any important substantive aspect of emergency planning from the operating license hearings. Whether an applicant satisfies the requirements of 50.47(a) and 50.47(b) is still an issue that may be raised and litigated in those hearings. In cases where such issues are raised, applicants' and State and local jurisdictions' emergency plans *should* be available for examination . . . (47 FR at 30233) (emphasis added).

The use of "should" was intended to convey the possibility that a plan or a part of a plan (*e.g.*, township or county) might not be available at the hearing if that jurisdiction has, for whatever reason, not yet completed a plan. In such cases, 10 CFR 50.47(c)(1) does allow the applicant to show that, because of other compensating factors, public health and safety will be adequately protected because of other plans or evidence of preparedness. 45 FR 55402, 55403 (1980); Mt. Transcript pp. 3–12 (July 23, 1980) [Docket No. PR–50 (44 FR 75167), Vol. 9]. Where this situation occurs, intervening parties would have the opportunity to challenge the applicant's assertion. The word "should," however, should not be read to mean that the NRC now believes that plans meeting the rule's criteria need not generally be available at the hearing. In that sense, the use of "should" in the above-quoted section is overboard and could understandably lead to concern. To a certain extent, the comment reflects concern that the NRC intended to undercut adjudication of emergency planning generally. As explained in this document, that is not the Comission's intention. Furthermore, contrary to the suggestion in some comments that NRC Boards are using the July 1982 amendments in just that way, the Commission has not found a single instance where that was the case. The proffered example, the *Zimmer* proceeding, is simply inapposite because the Board never decided this issue as characterized by petitioner and commenters.

Issued 6: The 1982 amendment violates the Atomic Energy Act and the Administrative Procedure Act by denying the public the right to litigate the adequacy of offsite emergency plans.

Commission Response: This argument is based upon a flawed premise. The adequacy of offsite emergency planning and capability of implementation continues to be fully litigable in the operating license proceeding. Intervenors may challenge any aspect of this planning and its capability of implementation as not complying with applicable NRC and FEMA standards.

The Commission has the discretion to separate matters which properly belong in the licensing phase from those which belong in the post-adjudicative operational phase. If this were not true—and the petitioner and commenters do not so argue—the Commission would be obligated to hold open the hearing record until a plant had been fully tested at commercial power levels, given the real possibility that a plant system may not function as projected in the earlier stages of the safety hearing. Pre-operational testing is no less crucial to plant safety that the full-scale exercise is crucial to measuring emergency preparedness (see response to Issue 7 below). It is nonetheless clear that the record of the licensing proceeding must close on all matters at some logical point, and the Commission has judicially-recognized discretion to select that point on a rational basis. Neither UCS nor commenters supporting the UCS position have put forth convincing arguments why the full-scale offsite test of the emergency plans may not be placed in the "operational events" category. As explained above problems identified in the course of exercises will either demonstrate problems with actual preparedness (which may be corrected in a straightforward manner) or with the plan process. The examples of exercise deficiencies raised in the comments fall into the former category and are not different from other kinds of preoperational problems. In the absence of a showing to the contrary, the argument that the Commission is forbidden by statute to permit licensing board decisions prior to the conduct of the exercise cannot be accepted.

Issue 7: The comment from FEMA emphasizes the importance of the full-scale offsite exercise in overall emergency planning and preparedness.

Commission Response: The Commission completely agrees with the comment from FEMA which states, in part:

> FEMA wishes to reaffirm the importance and value of the joint exercise for FEMA's findings concerning the adequacy of offsite plans and preparedness. A full-scale joint exercise plays an important role and is necessary if FEMA is to certify in a finding that State and local governments are capable of protecting public health and safety in the event of an accident at a commercial nuclear power plant. The exercise gives FEMA observers the opportunity to assess the readiness, knowledge, and skills of State and local government personnel as they attempt to implement the actions outlined in the plan and the objectives of a scenario adopted for the exercise.
>
> Deficiencies that are identified during an exercise provide State and Local governments and opportunity to take corrective action through additional exercising and plan modification, thus improving preparedness.
>
> FEMA's primary concern is that completion of an adequate joint exercise continue as a requirement for a full-power nuclear power plant license. FEMA defers to NRC on whether this should be a matter for its hearing boards to deal with in their full-power proceedings.

As is clear from the discussion above and from the notices of rulemaking accompanying the 1982 amendment, no full-power operation will be authorized prior to the full-scale joint exercise. In addition, no license will issue if the exercise demonstrates significant deficiencies:

The public should recognize that the Commission does not intend to

authorize the issuance of a full-power operating license if there has been a full-scale exercise which raises serious and significant deficiencies which have not been compensated for and which go to the fundamental nature of the plan itself. (Notice of Final Rule, 47 FR at 30234).

And while it is true that the evidentiary standard to re-open a closed record is high, it is not insurmountable. An intervenor in a licensing proceeding may request that the record be re-opened. If that option is unavailable, that person may request relief under 10 CFR 2.206. As FEMA suggests, the Commission should be able to make the determination whether a proceeding is necessary to examine the results of the exercise. The 1982 amendment objected to by UCS does no more than remove any doubt that the Commission may exercise this discretion on a case-by-case basis. Where the facts justify a further proceeding, one will be ordered. Where the exercise shows emergency planning to be fundamentally sound and in accord with the findings of the licensing board, further litigation as a matter of course would serve no purpose.

III. Findings

Upon a complete review of the record in this proceeding and in the rulemaking which resulted in the amendment placed in issue by UCS, the Commission finds nothing to indicate that it has erred either as a matter of law or as a matter of policy. Therefore, the Commission hereby denies PRM-50-35. As with pre-operational testing of safety systems, there are sound policy reasons for conducting the exercise as near in time as possible to commercial operation of the facility. The proper function of the adjudicative proceeding is to examine the emergency planning of the applicant and offsite jurisdictions and determine whether it meets NRC and FEMA standards. The Commission sees no benefit to be gained by delaying issuance of a full-power license for litigation over a basically successful exercise. It is within the Commission's legal discretion to prevent this result while at the same time enhancing the usefulness and credibility of the exercise by allowing the record to close in the proceeding prior to conduct of the exercise

Dated at Washington, DC, this 12th day of April, 1983.

For the Commission

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 83-10074 Filed 4-18-83; 8:45am]

BILLING CODE 7590-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 207, 208, 212 and 298

[Econ. Reg. Special Reg. Docket: 40336; EDR-456; SPDR-88]

Charter Trips and Special Services; Terms, Conditions, and Limitations of Certificates To Engage in Charter Air Transportation; Charter Trips by Foreign Air Carriers; Exemption for Air Taxi Operations; Public Charters; Correction

Dated: March 24, 1983.

AGENCY: Civil Aeronautics Board.

ACTION: Proposed rulemaking: Correction.

SUMMARY: In FR Doc. 83-9613, appearing on page 15639 in the April 12, 1983 issue, there is an incorrect deadline for submitting requests to be put on a Service List. Persons wishing to be put on the Service List should send requests to Docket 40336, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, by May 2, 1983 instead of April 15, 1983 as previously stated.

FOR FURTHER INFORMATION CONTACT: Richard B. Dyson, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5442.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-10334 Filed 4-18-83; 8:45 am]

BILLING CODE 6320-0

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket No. 82N-0089]

Vitamin D_2 and Vitamin D_3; Proposed Affirmation of GRAS Status, With Specific Limitations, as Direct Human Food Ingredients

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to affirm that vitamin D_2 and vitamin D_3 are generally recognized as safe (GRAS), with specific limitations, as direct human food ingredients. The safety of these ingredients when used as food nutrients has been evaluated under the comprehensive safety review conducted by the agency. The proposal would take no action on the listing of these ingredients as GRAS substances for use in dietary supplements.

DATE: Comments by June 20, 1983.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Leonard C. Gosule, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-9463.

SUPPLEMENTARY INFORMATION: FDA is conducting a comprehensive review of human food ingredients classified as GRAS or subject to a prior sanction. The agency has issued several notices and proposals (see the **Federal Register** of July 26, 1973 (38 FR 20040)) initiating this review, under which the safety of vitamin D_2 (ergocalciferol) and vitamin D_3 (cholecalciferol) has been evaluated. In accordance with the provisions of § 170.35 (21 CFR 170.35), the agency proposes to affirm the GRAS status of these ingredients, with specific limitations, when used as nutrients in conventional food [1] and infant formula.

The GRAS status of the use of vitamin D_2 and vitamin D_3 in dietary supplements (i.e., over-the-counter vitamin preparations in forms such as capsules, tablets, liquids, wafers, etc.) is not affected by this proposal. The agency did not request consumer exposure data on dietary supplement uses when it initiated this review. Without exposure data, the agency cannot evaluate the safety of using these ingredients in dietary supplements. The use of these ingredients in dietary supplements will continue to be authorized under Subpart F of Part 182 (21 CFR Part 182).

Vitamin D is historically the antirachitic vitamin, and currently it is considered both a vitamin and a hormone. Antirachitic activity can be elicited by exposure of the skin to ultraviolet irradiation, by provitamin D compounds, or by foods and other materials containing such compounds. The natural food sources of vitamin D are basically limited to fish and fish oils, eggs, liver, butter, and milk. Milk is a relatively poor source of vitamin D, unless it is fortified. Vitamin D activity is exhibited by several compounds, some of which occur naturally and some of which are synthetic. The principal compounds, and the only ones

[1] FDA is using the term "conventional food" to refer to food that would fall within any of the 43 categories listed in § 170.3(n) (21 CFR 170.3(n)).

considered GRAS for addition to food are vitamin D_2 and vitamin D_3.

Vitamin D_2 is 9,10-seco(5Z,7E,22E)-5,7,10(19), 22-ergostatetraene-3 β-ol. It is produced by irradiation of ergosterol isolated from yeast and related fungi. Vitamin D_2 occurs as white, odorless crystals, melting at 115° to 118° C, with a specific rotation, [α] 25°/D, between +103° to +106°. It is insoluble in water but soluble in alcohol, chloroform, ether, and fatty oils.

Vitamin D_3 is 9,10-seco(5Z,7E)-5,7, 10(19)-cholestatrien-3-ol. It occurs in, and is isolated from, fish liver oils. It is also produced naturally through sunlight activation of 7-dehydrocholesterol in the skin. Vitamin D_3 occurs as white, odorless crystals, melting between 84° and 88° C, with a specific rotation, [α] 25°/D between +105° to +112°. It is insoluble in water but soluble in alcohol, chloroform, and fatty oils.

Vitamin D_2 and vitamin D_3 were listed as GRAS nutrients in a regulation published in the **Federal Register** of November 20, 1959 (24 FR 9368). Subsequently, they were listed as GRAS nutrients and dietary supplements in a regulation published in the **Federal Register** of January 31, 1961 (26 FR 938). However, in a final rule published in the **Federal Register** of September 5, 1980 (45 FR 58837), FDA divided the nutrient and dietary supplement category into separate listings for GRAS dietary supplements and GRAS nutrients. Therefore, vitamin D_2 and vitamin D_3 currently are listed as GRAS in §§ 182.5950 and 182.5953 (21 CFR 182.5950 and 182.5953), respectively, for use in dietary supplements and in §§ 182.8950 and 182.8953 (21 CFR 182.5950 and 182.8953), respectively, for use in food as nutrients.

Vitamin D is listed in Federal standards of identity as a required ingredient in certain milk products (21 CFR 131.127, 131.130, and 131.132). It is also listed as an optional ingredient in other milk products (21 CFR Part 131), certain enriched cereal products (21 CFR Part 137), certain enriched pasta products (21 CFR Part 139), and in margarine (21 CFR 166.110). Section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) lists vitamin D as a required nutrient in infant formula, subject to level restrictions. FDA is reviewing all nutrient levels in infant formulas under a contract with the American Academy of Pediatrics. Any necessary modifications in the nutrient levels of vitamin D in infant formula will be proposed by a separate rulemaking under section 412(a)(2) of the act. Vitamin D also may be used to fortify foods as described in Part 104 (21 CFR Part 104).

In 1971, the National Academy of Sciences/National Research Council (NAS/NRC) surveyed a representative cross-section of food manufacturers to determine the specific foods in which vitamin D_2 and vitamin D_3 were used and the levels of usage. NAS/NRC combined this manufacturing information with information on consumer consumption of foods to obtain an estimate of consumer exposure to these ingredients. On the basis of these data, FDA estimates from the NAS/NRC survey that the amounts of vitamin D_2 and vitamin D_3 used in food in 1970 were 290,000 pounds and 78,000 pounds, respectively. The survey revealed that the use of vitamin D_2 in food increased approximately threefold from 1960 to 1970, whereas the use of vitamin D_3 in food was virtually unchanged during this period.

Vitamin D_2 and vitamin D_3 have been the subjects of a search of the scientific literature from 1920 to the present. The criteria used in the search were chosen to discover any articles that considered (1) chemical toxicity, (2) occupational hazards, (3) metabolism, (4) reaction products, (5) degradation products, (6) carcinogenicity, teratogenicity, or mutagenicity, (7) dose response, (8) reproductive effects, (9) histology, (10) embryology, (11) behavorial effects, (12) detection, and (13) processing. A total of 6,395 abstracts on vitamins D_2 and D_3 was reviewed, and 317 particularly pertinent reports from the literature survey have been summarized in a scientific literature review.

Information from the scientific literature review has been summarized in a report to FDA by the Select Committee on GRAS Substances (the Select Committee), which is composed of qualified scientists chosen by the Life Sciences Research Office of the Federation of American Societies for Experimental Biology (FASEB):

Absorption and Excretion

All known forms of vitamin D are absorbed with food fats. Thus, essentially all factors affecting the absorption of fat in the alimentary tract affect the absorption of vitamin D. Absorption occurs in the jejunum and/or ileum, with most of the vitamin in the chylomicrons of the lymphatic system. Bile is essential for absorption of vitamin D and it also seems to be the major pathway of excretion of vitamin D_2 and vitamin D_3 after they have been metabolized to certain hydroxy derivatives.

Absorbed vitamin D circulates in the blood. Metabolites of vitamin D are formed in the liver and in the kindney; movement from the plasma chylomicrons and lipoproteins appears to occur in the liver by transfer to an α_1-globulin fraction which acts as a carrier. Kodicek has reviewed evidence to show that vitamin D is absorbed through the skin after topical application.

Metabolism

As early as 1934 Waddell found that crude cholesterol preparations contained a provitamin D constituent which, after irradiation, was more potent against rickets in chicks and hence different from that obtained by irradiating ergosterol. Since that time the multiple nature of vitamin D has been established and, in the last decade, much knowledge has accumulated concerning the metabolism of the vitamins D and their modes of action. It is apparent that vitamin D_2 and vitamin D_3 require metabolic conversion before they can function as the vitamin or hormone. The major developments invlove several hydroxylated metabolites of vitamin D, with most of the attention focused on the metabolism of vitamin D_3. After transport to the liver, a hydroxylase system in the microsomal component effects hydroxylation on carbon atom-25. Some evidence suggests that this process is feedback regulated by the concentration of the 25-OH-D_3 metabolite in the liver. A specific protein transports the 25-OH-D_3 to the kidney where further enzymatic hydroxylation occurs to yield 1,25-$(OH)_2D_3$ or 24,25-$(OH)_2D_3$, as determined by physiological circumstances. The 1,25-$(OH)_2D_3$ is 10 to 15 times more potent than vitamin D_3 when administered parenterally. It is the most potent form of vitamin D known in effecting intestinal calcium absorption, bone calcium mobilization, and elevation of serum phosphate. In response to hypocalcemia, the parathyroid glands secrete parathyroid hormone. This triggers the synthesis of 1,25-$(OH)_2D_3$, which with the parathyroid hormone, function in the mobilization of calcium from bone and without the parathyroid hormone, effects calcium absorption in the intestine. Such processes involve a dynamic balance in which elevated levels of serum calcium suppress secretion of parathyroid hormone, consequently decreasing the synthesis of 1,25-$(OH)_2D_3$. Thus, the latter can be regarded as a calcium metabolizing hormone as well as a vitamin.

Owing to the multi-step nature of the processes leading to the metabolic formation of 1,25-$(OH)_2D_3$, an impairment in any step can be presumed to be harmful. Diseases which may be attributed to insufficient vitamin D may in fact be due to a metabolic block in the formation of 1,25-$(OH)_2D_3$. Bone disease associated with renal failure may involve an impairment in the 1-hydroxylation process. Also, hypoparathyroidism can be linked with an impairment of 1,25-$(OH)_2D_3$ synthesis. This is indicated by the effectiveness of this vitamin D_3 metabilite in parathyroid hormone deficiency as produced through thyroparathyroidectomies in rats and occurring spontaneously in hypoparathyroid patients. For example, DeLuca has stated, that treatment with 1 g per day of 1α,25-$(OH)_2D_3$ is entirely successful while 2,000 g of vitamin D_3 are required to be effective in treating the disease.

Minimal responsiveness to vitamin D generally referred to as vitamin D

dependency, an inherited postnatal syndrome. Alleviation of the syndrom may occur if there is continued therapy with large amounts (1.25 mg or about 50,000 IU) of vitamin D per day. The occurrence of this hereditary trait is low but the incidence appears to be higher than once suspected. The newer knowledge of vitamin D is having marked effects in the interpretation of treatment of the vitamin D-dependent, as well as normal individuals, with massive doses of vitamin D.

Progress in the study of vitamin D metabolites and the interrelationship of vitamin D to the parathyroids has been comprehensively reviewed by DeLuca, Omdahl and DeLuca, Hay and Harrison.

Animal Toxicity Studies

The extensive literature on the effects of vitamin D administration in many species has focused on crystalline vitamin D_2 and vitamin D_3, but also includes studies on the effects of related sterols having vitamin D activity, as well as rich sources of vitamin D, such as high potency fish liver oils.

The LD_{50} of vitamin D_2 sulfate given intraperitoneally to mice was found to be about 2,500,000 IU per kg.

Minimal dosage for production of generalized calcinosis by intramuscular injection of vitamin D_2 in male rabbits was 500,000 to 600,000 IU given in 3 equal doses at intervals of 2 days. Signs of generalized calcinosis appeared after 8 days; dosage was about 45,000 to 50,000 IU per kg per day. Calcinosis increased in severity on such a regimen if injections were extended to 3 weeks. Anorexia, loss of weight and death occurred within about 6 weeks. Vitamin D_2 given subcutaneously daily for 3 consecutive days to rabbits at a level of 5,000 IU per kg per day, showed increased calcification of dentine but no side-effects. Administration of 10,000 IU per kg per day by the same procedure led to anorexia, weight loss and death in five to seven days. By contrast a dose of 800,000 IU of vitamin D_3 per kg daily, given subcutaneously, elicited no side-reactions. Vitamin D_2 in cottonseed oil was administered intramuscularly every other day for 30 days to 8 adult female rabbits beginning the day after observed copulation. Total dose over the 30 day period was 1.5 million IU (about 50,000 IU per kg) on each day of injection. No differences were observed between these animals and controls receiving no injected vitamin D_2 except for higher vitamin D levels in the blood of the former. Pregnant females given a total dose of 2.5 million IU (about 85,000 IU per kg per day) or more over the 30 day period died 65 days after the first injection.

In an early study performed before an IU for vitamin D had been established, groups of weanling rats were fed a stock diet containing enough irradiated yeast to supply 40 times the ricketts-curative does of vitamin D. Irradiated ergosterol was added to this diet in amounts necessary to provide vitamin D activity equivalent to 50, 1,000, 10,000, or 100,000 times the curative level. Amounts as high as 10,000 times the daily curative dose over a period of 6 months had no effect on growth and body functions. At levels 100,000 times the daily curative dose toxic effects were observed, including anorexia, labored breathing, net loss of calcium and phosphorus from the body, hypercalcemia, skeletal decalcification, and renal calcification. In more detailed studies Harris *et al.* fed weanling rats for 20 days on a basal diet containing irradiated ergosterol (vitamin D_2) or tuna liver oil (vitamin D_3) at a dose of about 500,000 IU per kg daily. The authors observed that this dose was at least 5,000 times the therapeutic dose for rats. There was weight loss, and calcification occurred in the kidneys, stomachs, aortas, hearts, and lungs of rats receiving either source of vitamin D. As measured by such criteria, irradiated ergosterol was more toxic than tuna liver oil.

In a study of only one source of vitamin D (electrically activated caporized ergosterol), rats fed up to 20,000 IU per kg daily for varying periods of time ranging from 100 days to 190 days showed no histological changes in the heart, lungs, liver, spleen, pancreas, stomach, adrenal glands, kidneys, aorta, or brain. Likewise, no roentgenographic or other abnormalities suggestive of toxic effects were noted for this preparation at the dose employed. Other investigators fed rats a stock diet in which the activated ergosterol (vitamin D_2) was incorporated daily during the last 2 weeks of a total study period of 4 weeks. The daily dose of vitamin D was 60,000 to 100,000 IU per kg body weight. Based on comparisons with a control group, there were no signs of harmful effects on growth rate, bone and tooth formation, tooth eruption rates, estrus cycle, possible occurrence of tooth pulp stones, or general appearance and behavior.

There is a suggestion in the studies of Zemplenyi and Mrhova that adult male rats, fed a basal diet containing 0.7 percent cod liver oil, undergo vascular enzyme changes when they are fed, in addition, about 75,000 IU vitamin D_3) in oil daily for periods of 5 to 9 days. In the aorta there was an increase in the activity of phosphomonoesterase I and II and of 5'-nucleotidase, whereas the activity of carboxylic esterase decreased slightly. The investigators interpreted the changes in the phosphomonoesterases and nucleotidase as reflecting an increase in vascular connective tissue activity. The authors speculated that the slight change in carboxylic esterase might be related to an increase in abnormal polysaccharides or calcium salts in the aorta.

Cruess and Clark in well-controlled experiments, fed male rats daily 150,000 IU vitamin D_2 per kg body weight dissolved in sesame oil for up to 24 days. Growth was impaired, bone ash was decreased and the organic fraction of the bones (including all the phospholipids examined was increased. On the basis of ^{32P} uptake measurements it was apparent that hypervitaminosis D_2 increased the synthesis of phospholipids.

Hass *et al.* observed histologically the distribution and evolution of lesions of the vascular system in male rabbits dosed intramuscularly with 43,000 to 260,000 IU vitamin D_2 per kg body weight daily, twice weekly or thrice weekly for periods as long as 6 to 8 weeks. The amount and distribution of abnormal calcium deposits in the soft tissues increased with increasing duration and size of the vitamin D dose. The total minimal dose for production of significant generalized calcinosis was 500,000 to 600,000 IU administered over a period of 3 weeks, but the authors note that interpretation of their results was complicated by intermittent chronic purulent pyelonephritis and hepatic coccidiosis in both experimental and control animals. Calcium was most conspicuously distributed in the aorta and its main branches, and somewhat less so in the kidneys. It was concluded that administration of vitamin D in amounts just sufficient to produce pathologic changes in 2 or 3 weeks led to mineralization of certain tissues which do not normally calcify.

Steck *et al.* fed adult dogs vitamin D_2 in corn oil in daily dosages of 15,000 to 500,000 IU per kg body weight. In amounts greater than 50,000 IU per kg daily the average survival time was about 12 days; with 20,000 IU or less per kg daily there was survival for indefinite periods without signs of intoxication. While weight loss, hypercalcemia, and kidney calcification were prominent in animals receiving the higher doses, these signs were absent in animals receiving 20,000 IU of less per body weight. Hendridks *et al.* concluded that the cumulative effects on tissue calcification in dogs of capsule doses of about 5,000 IU vitamin D per kg body weight per day over a period of 10 months were not as severe as a single dose of about 50,000 IU per kg body weight.

Kent *et al.* studied a colony of 558 monkeys (*Mucaca mulatta*) 3 to 9 years old, weighing 2.5 to 10 kg, that were inadvertently fed excessive amounts of calcium, phosphorus, and vitamin D (kind not stated) for about 3 months. During this period each animal received daily approximately 182,000 IU (about 18,000 to 65,000 IU per kg) vitamin D, and 3.5 g of calcium and 2.9 g of phosphorus. There was weight loss and an increase in the incidence of upper respiratory tract infections and diarrhea. Calcium and iron deposits occurred in the kidneys, salivary glands, and lungs and were found in the aortas of 12 of 34 animals dying between the 55th and the 140th day. About 1 month after termination of the dietary excesses, the surviving animals appeared to be in good health and monkeys sacrificed after 1 year showed few lesions that were considered related to hypervitaminosis D. Comparative studies on the toxicity of different sources of vitamin D fed in excessive amounts to dogs indicated that a commercial source of vitamin D_2 had a far more rapid and severe toxic effect (calcification of soft tissues) than did equal dosage of vitamin D administered as tuna liver oil. Doses were approximately 10,000 IU per kg per day over a period of 8 to 10 months. Jung using crystalline vitamins D_2 and D_3 and irradiated ergosterol in oral doses up to 300,000 IU per kg per day in rats, found no difference in their toxicity (weight loss) but similar doses of 7-dehydrocholesterol were found to be 2 to 3 times more toxic than any of the other sources. Mrazek *et al.* in comparing the chronic toxicity of vitamin D_2, and vitamin D_3 and activated ergosterol in adult rats, intubated 75,000 IU per kg per day until all of the animals died. The average survival time of rats receiving vitamin D_2 was about 43 days, vitamin D_3 about 22 days, and

activated ergosterol about 70 days. McChesney found that orally, vitamin D_3 is about 55 percent more toxic and dihydrotachysterol about 280 percent more toxic than vitamin D_2 in the rat. He concluded that the relative toxicities of vitamin D_2 and D_3 correlate well with their hypercalcemic effects. Hunt *et al.* using daily oral doses of 50,000, 100,000 and 200,000 IU of vitamin D_2 or vitamin D_3 in rhesus monkeys found that vitamin D_3 was significantly more toxic than vitamin D_2 in this species. Animals given vitamin D_3 at all dose levels died within 160 days. Those receiving vitamin D_2 survived, developed hyperecalcemia, but showed no soft tissue mineralization after sacrifice.

In a long-term study by Bills and Wirick on the effects of overdoses of vitamin D, done prior to the establishment of the International Unit, and employing approximately 1200 rats including second and third generations, it was concluded that 0.25 percent activated ergosterol added to the diet (equivalent to 100 times the minimum antirachitic level) caused no observable effect on appearance, growth, reproduction, or resistance to respiratory infections. One thousand times the antirachitic dose was found to be "perceptibly harmful," 4000 times "definitely injurious," and 40,000 times "strongly toxic."

Human Toxicity Studies

Of a large number of reports on the effects of excessive vitamin D intake in humans, several are noteworthy.

Steck *et al.* summarized their observations on 773 subjects ranging in age from 17 to 76 who were given supplemental doses upward of 3000 IU vitamin D (presumably as activated ergosterol) per kg per day for 7 days to 5 years. They concluded that the shortest period of administration producing toxicity (weight loss, increased calcium excretion) in the group receiving 3000 to 5000 IU per kg per day was 87 days. In the group receiving 6000 to 7000 IU per kg per day the shortest period for toxicity to occur was 60 days. Of the 773 subjects, about 16 percent showed toxic signs at levels up to 25,000 IU per kg per day. The adverse effects were found to be reversible even at the highest level when dosing was discontinued.

Cogan, *et al.* described five patients who had taken doses of vitamin D varying from 100,000 to 500,000 IU (about 1,700 to 8,300 IU per kg) daily over 2.5 months to 5 years for treatment of rheumatoid arthritis or pruritus. All patients showed hypercalcemia, band keratopathy, and evidence of renal insufficiency as indicated by elevated blood nonprotein nitrogen and inorganic phosphorus. There was no bone decalcification or elevation in serum alkaline phosphatase.

Howard and Meyer reviewed the cases of 11 adult patients age 33 to 68, who had been given daily doses of vitamin D_2 (activated ergosterol) ranging from 150,000 to 600,000 IU (about 2,500 to 10,000 IU per kg daily) as a therapeutic measure against arthritis. Fatigue, weight loss, and anorexia were observed in 2 to 18 months. The outstanding clinical signs were impairment of renal function and degenerative lesions with calcification such as band keratitis. In all cases the blood nonprotein nitrogen and serum calcium were elevated.

Chaplin *et al.* reviewed 111 cases of vitamin D intoxication appearing in the literature and described 7 additional cases under their observation. All seven had been taking 50,000 to 300,000 IU (about 1,000 to 6,000 IU per kg) of vitamin D daily for periods ranging from 3 weeks to 6 years. Band keratitis, calcium-containing periarticular cysts in the vicinity of bursae, and hypercalcemia were among the characteristic findings.

DeLuca and Cozzi reported on 12 infants, ages 7 to 30 months, intoxicated by doses of 48,000 to 200,000 IU (about 10,000 to 40,000 IU per kg) daily for 30 to 50 days. The signs and symptoms observed included anorexia, restlessness, pallor, hypercalcemia, lowered alkaline reserve, and renal insufficiency.

Debré found in a clinical study of 21 cases of vitamin D overdosing in children, aged 16 months to 7 years, that a total intake of 11 to 18 million IU (time period not stated) was fatal in two instances. Patients receiving total intakes of 3 to 6 million IU (time period not stated) experienced anorexia, vomiting, thirst, headache, and joint pain. These symptoms disappeared within 10 days after vitamin D dosing was stopped.

Other effects associated with vitamin D intakes of 1,000 to 3,000 IU per kg daily for periods up to several years include confusion, lethargy, and behavioral and neuropsychiatric disturbances, manic-depressive psychosis, mental depression, general malaise, and headache, and anemia.

There appear to be no recorded cases of vitamin D toxicity from over exposure to sunlight and no reported studies of the relative toxicity of vitamin D_2 and vitamin D_3 in humans.

Linear Growth of Infants

The conclusion of Stearns that "the critical upper safe level for continuous intake of vitamin D must be somewhere between 800 to 1500 units daily" raises a question about adverse effects of rather modest intakes of vitamin D and therefore merits careful evaluation. The control group employed in the comparisons consisted of 36 male infants observed by Stearns *et al.* in a metabolic ward and fed 340 to 400 IU of vitamin D daily during all or part of the first year of life. These infants received excellent care and presumably had little exposure to infection. Although it is acceptable to compare performance of this group with that of other groups studied under similar circumstances, growth comparisons of small groups of subjects are likely to be misleading and must be examined in detail. Unfortunately, this is not possible with respect to the linear growth of the infants studied by Stearns *et al.* The number of subjects available at each age was not stated and the presentations concerned semilongitudinal size data rather than incremental data. In most instances, the mean body length at various ages was presented without statistical summary of variability (e.g., confidence intervals), and statistical analysis of the differences between groups was not included.

Stearns stated, "It is emphasized that the slowing of growth noted with excessive vitamin D dosage does not appear in most infants until about five or even six months of age". She stated that 22 infants studied by Jeans and Stearns received 1800 to 4500 IU of vitamin D daily but it is not clear how many of these infants were studied for more than 6 months. Detailed data have been published concerning only 9 of these 22 infants and 4 of the 9 received doses of vitamin D of 1800 IU or more daily only until 15 to 20 weeks of age. Thus, evaluation of the data must rest on observations of 5 infants. Charts presenting body length versus age suggest that one infant (subject G) may have had some slowing of linear growth after 26 weeks of age. Another infant (subject S) may have demonstrated some slowing after 26 weeks of age but initiation of more rapid growth appeared to precede the decrease in dosage of vitamin D. Growth of the remaining three infants did not appear remarkable. The Select Committee considers these data inadequate to support a conclusion that moderate overdosage of vitamin D (1,800 to 4,500 IU daily) interferes with linear growth.

Equally unimpressive as support for Stearns' conclusion are her comparisons of linear growth of the 36 infants given 350 to 400 IU of vitamin D daily while living in the metabolic unit, with data on the linear growth of larger groups of infants living at home and studied by other investigators. Because of the great differences in environment and probably in aspects of nutritional management other than intake of vitamin D, such comparisons seem inappropriate.

Fomon *et al.* studied three groups of male infants; one group received 350 to 550 IU vitamin D daily; a second group 1,380 to 2,170 IU daily; a third group 300 IU daily. The latter group was breastfed and the other two groups received evaporated milk formulas. During a test period of 168 days the rates of growth in length and weight and the serum concentration of calcium were similar in the three groups. This study failed to provide evidence that the level of overdosage of vitamin D interferes with the growth and well-being of normal infants.

Idiopathic Hypercalcemia

Unexplained hypercalcemia of infants was first described in 1952 and circumstantial evidence implicating vitamin D in its pathogenesis was presented. Several reviews have helped to provide perspective on the relation between intake of vitamin D and the disorder known as "idiopathic hypercalcemia (of infancy) or infantile hypercalcemia."

The disorder is generally classified as mild or severe, although some cases cannot be easily assigned to one of these two categories because of intermediate manifestations. The best available data on incidence are from the United Kingdom where in 1960–1961 there were 35 cases per year with about 785,000 births, giving an incidence of 1 case in 20,000 live births. Because approximately 8 percent of the British cases were classified as severe, the incidence may be estimated to be 1 severe case for every 275,000 births.

Patients with the mild form demonstrate hypercalcemia and, by 3 to 7 months of age, generally demonstrate mild growth retardation. Although there are some exceptions, long-term prognosis is generally excellent. Patients with the severe form

demonstrate hypercalcemia, failure to thrive, a characteristic "elfin" facies, impairment of renal function, severe mental retardation, dense mineralization of the base of the skull and metaphyses of the long bones, and not uncommonly supravalvular aortic stenosis or peripheral pulmonary artery stenoses.

In the mid 1950s it was estimated that a substantial number of normal infants in Britain might receive as much as 4000 IU of vitamin D per day by ingesting nationally subsidized or commercially prepared milk powders, infant cereals and one of the commonly employed vitamin D supplements. According to the American Academy of Pediatrics, in 1956 the British Paediatric Association, through a survey of its members, reported that in a 30-month period from 1953–55, a total of 216 cases of infantile hypercalcemia were encountered (about 7.2 cases per month). Becase of the possibility that this was related to moderate overdosage of vitamin D, drastic reductions were advised in the amounts of vitamin D added to certain foods. By 1957, manufacturers had already reduced the extent of vitamin D supplementation. By 1959, it was believed that the old products must nearly have disappeared from the retailers and another survey of the members of the British Paediatric Association was carried out. A negligible decrease to about 6.8 cases per month was reported. However, the British Ministry of Health noted that certain vitamin supplements still provided 800 IU of vitamin D daily and steps were taken to reduce the dosage or provide a warning on the label. A third survey of the members of the British Paediatric Association was conducted in 1960–61 and demonstrated a substantial fall in prevalence of idiopathic hypercalcemia to about 3.0 cases per month. The cautious conclusion of the British Paediatric Association was as follows:

* * * This is probably a real decrease in the prevalence of hypercalaemia, because the methods of inquiry and the number of responding paediatricians were comparable and the impression of most clinicians supports the quantitative data. The decrease might in fact be greater than appears if the diagnosis of hypercalcaemia has become progressively more accurate since 1953. The marked decline in hypercalcaemia does not correspond in time with the major reduction in vitamin D allowances which took place in 1957–58, but followed it after an interval of two to three years.

Other authors seemed somewhat more convinced of the relation between reduction in intake of vitamin D and the decreased incidence of idiopathic hypercalcemia. It is to be noted that the incidence figures pertain at least primarily to the mild form of idiopathic hypercalcemia. Whether there was a decrease in incidence of the severe form in Britain in the late 1950s is unknown.

Several additional bits of information suggest the need for caution in assigning vitamin D a causative role in etiology of the mild form of idiopathic hypercalcemia. Of the 50 cases (which apparently included 4 cases of the sever form) identified by the 1960–61 survey of the British Paediatric Association, 28 percent were stated to have received no vitamin D supplements before the onset of the disease. Serum vitamin D concentrations have been found to be in the normal range in mildly affected infants and in severely affected infants have been markedly increased in some patients and normal in others. Some but not all mildly affected infants demonstrate an exacerbation of hypercalcemia when challenged with vitamin D.

There is no evidence that women whose offspring were severely affected *in utero* had ingested more than 400 to 800 IU of vitamin D daily during pregnancy. Furthermore, infants born to women with hyperparathyroidism do not demonstrate any of the manifestations associated with the severe form of idiopathic hypercalcemia. As summarized by the Committee on Nutrition of the American Academy of Pediatrics, if vitamin D plays a role in the intrauterine development of the severe form of infantile hypercalcemia, it must do so either by placental transfer of the vitamin from the mother to the excessively vitamin D-sensitive fetus or, alternatively, by producing a response in the excessively sensitive mother which is deleterious to the fetus.

Vascular Effects

Dalderup *et al.* and Knox have proposed an association between excessive vitamin D intake and death from ischemic heart disease. Lindén and Westlund reported an association between renal calculi and coronary heart diseasse. Lindén studied 341 men and women in Norway with disorders which qualified them for disability pensions. These included 150 persons with myocardial infraction. The disabilities included, besides myocardial infarction, angina pectoris and degenerative joint diseases. In the study were 341 controls randomly selected in the same area and of the same sex and age distribution, but without qualifying for disability pensions. Both men and women with myocardial infarction were consuming somewhat larger amounts of vitamin D (more than 1250 IU per person per day) than any of the other groups (approximately 900 IU per person per day). There was no difference between the controls and the subjects with angina pectoris and degenerative joint diseases. The data give some support to Linden's hypothesis that long-term ingestion of excesses of vitamin D may be a factor in the occurrence of myocardial infarction.

Kummerow *et al.* reported that the abdominal aorta from weanling swine fed 100,000 IU vitamin D_3 per pound of feed for 5 weeks had localized collections of fibrous and amorphous extracellular material. Smooth muscle cells appeared atypical. This did not occur in the controls on the same diet which contained 650 IU vitamin D_3 per pound of ration. The vitamin D content of the tissues of weanling swine given the large vitamin D_3 supplement for 6 weeks was several orders of magnitude higher than in the unsupplemented controls. The blood serum, muscle, fat, and liver from normal human subjects assayed for higher levels of vitamin D than these tissues from unsupplemented swine that had been fed a regular corn and soybean commercial ration. There appear to be no studies in which an excess of vitamin D has been given in somewhat smaller doses and for longer periods of time.

Pregnancy and Neonatal Effects

Massive doses of vitamin D to rats have long been known to affect the estrus cycle, fertilization, and course of pregnancy. In a study of Ornoy *et al.* vitamin D_3 doses of the order of 4,000, 20,000, and 40,000 IU (about 10,000, 50,000 and 100,000 IU per kg, respectively) were administered daily by intubation to pregnant and nonpregnant rats. Four thousand and 20,000 units administered from the 9th day of pregnancy had no apparent deleterious influence of the fetal development. At a dose of 40,000 IU the placentas, fetuses, and bones were all small, and the progeny were nonviable. The results suggest that vitamin D_3 or a metabolite passes through the placental barrier.

In experiments with rabbits given total dosages of 1.5, 2.5, 3.5, or 4.5 million IU (about 50,000 to 150,000 IU per kg body weight on each day of intramuscular injection) of vitamin D_3 throughout the term of pregnancy (30 days) it was shown by Friedman and Roberts that the vitamin, or a metabolite, crossed the placenta. The blood levels of antirachitic substance in the mothers given vitamin D and their offspring were seven and nine times greater than in the control mothers and offspring, respectively. Also, the serum calcium levels in the offspring whose mothers received vitamin D were significantly higher than those of controls.

Nonfamilial, congenital supravalvular aortic stenosis syndrome is a concomitant of idiopathic infantile hypercalcemia. In the study of pregnant rabbits given intramuscular doses of about 25,000 IU vitamin D_3 per kg body weight throughout pregnancy, 14 abnormal aortas were noted in the 34 offspring. Six additional offspring at three months showed generalized vitamin D vasculotoxicity, without supravascular narrowing of the aorta, of an advanced type commonly seen in the adult animal given large doses of the vitamin. None of the control animals showed any abnormalities of the aorta. Thus, this study strongly suggests that large doses of vitamin D during pregnancy have an effect on the fetus and the excessive vitamin, or a metabolite, may be responsible for supravalvular aortic stenosis.

In related studies by Friedman and Friedman and Mills in rabbits, relationships were found between vitamin D excess in pregnancy and certain craniofacial and dental anomalies of the supravalvular aortic stenosis syndrome. Fifteen pregnant rabbits were given divided doses of vitamin D_3 intramuscularly in cottonseed oil every other day, starting on the second day after insemination and continuing until delivery. The total dose administered was 750,000 IU, an average of approximately 27,000 IU (about 13,000 IU per kg body weight) per day. The offspring from the vitamin D-treated mothers had hypoplasia of the mandible, congenital absence of teeth, microdontia, and enamel hypoplasia. The most marked functional accompaniment of these abnormalities was severe malocclusion of the teeth. Many of the test animals had peculiar facies, premature closure of the cranial bones, strabismus, odd-shaped ears, and low birth weight.

In the interpretation of experiments based on the use of massive oral doses (e.g. 50,000–

100,000 IU per kg daily to rats during the last 9 days of pregnancy] of vitamin D it should be recognized that such amounts reportedly not only damage the placenta but also alter the normal physiologic transfer mechanisms of the placental barrier. However, such effects do not invalidate the experiments as a whole. Haddad *et al.* have shown that the placental transfer for vitamin D_3 and its active hydroxylated metabolite proceeds at comparable rates. Also, the data suggest that vitamin D_3 metabolites cross the placent rapidly and/or are produced by the fetuses. The findings leave room for the possibility that the fetus is capable of transforming vitamin D_3 from the mother to the metabolite(s) observed in the fetal tissue. The data support the suggestion made in 1967 that idiopathic hypercalcemia and supravalvular aortic stenosis of infants might be the consequence of a vitamin D metabolite produced in maternal or placental tissues during pregnancy.

The variability between individuals and genetic strains in the response to maternal excesses of vitamin D has been shown in various studies. The findings of Ornoy *et al.* illustrate such variability. Wistar strain rats wer given 40,000 IU (abour 200,000 IU per kg) ergocalciferol in olive oil daily by intubation from the tenth to twenty-first day of pregnancy. Charles River rats (a more susceptible strain) were similarly dosed with 40,000 IU and a separate group was given 20,000 IU of the vitamin. The young of all Charles River rats died even at the smaller dose level. Seven of the litters of 14 Wistar rats given 40,000 IU of vitamin D per day survived beyond the first postnatal day. The surviving offspring showed no gross malformation at birth but after a few days skeletal deformities developed. It was concluded that the postnatal effects at these high dosage levels were not due to persistence of an excess of vitamin D in the tissues or through the milk, but resulted from a fundamental teratogenic effect on the fetal osteogenic tissues which became manifest as the bone developed. In the same laboratory it was reported that toward the end of pregnancy in Wistar rats receiving oral doses of 20,000 to 40,000 IU of vitamin D_3 daily from early in the second week of gestation, the chorioallantoic placentae showed a delay in trophoblastic maturation and blood vessel formation in the villi. Calcification was detected around fetal and maternal blood vessels.

Mutagenicity

The Select Committee is not aware of any experimental data concerning the mutagenic activity of vitamin D that have significant bearing on the health aspects of vitamin D as a food ingredient.

Carcinogenicity

Barry *et al.* applied 0.3 percent ergosterol and calciferol in benzene twice weekly to the skin of mice and found no tumors (epitheliomas, papillomas) after 600 days. Jones *et al.* considered whether vitamin D-induced hypercalcemia might affect the incidence of tumor metastases in rats. Normal and thyroparathyroidectomized Sprague-Dawley rats were given subcutaneous injections of 20,000 IU of water-soluble vitamin D_3 (about 130,000 IU per kg per day) on alternate days for one week. The animals were then given injections of Walker sarcoma cells. Seventeen days following the tumor inoculations the animals were sacrificed and examined for the presence of gross tumors in the liver and mesentery. Hypercalcemia occurred in all animals but there was no change in the incidence of tumor takes in the animals given vitamin D_3 as compared to controls. Questions concerning the possible carcinogenicity of large amounts of vitamin D were reviewed in 1950 by Touraine and Zureick who concluded that the evidence was negative. However, they suggested that further study in animals and accumulation of data from clinical experiences and observations were warranted.

Interaction With Drugs and Vitamin A

The biologic action of vitamin D_2 and vitamin D_3 requires several metabolic steps, some of which include protein synthesis. Thus, drugs and related substances which affect any of the metabolic steps also affect the manifestation of activity from ingested vitamin D. For example, actinomycin D and cycloheximide, well known for their effects in certain metabolic pathways, inhibit the functioning of 1,25-$(OH)_2$-vitamin D_3.

Several authors have reported an increased incidence of rickets in children regularly treated with multiple doses of anticonvulsant drugs; in the adult the interaction may lead to hypocalcemia or osteomalacia. The abnormalities reported are very similar to those observed in vitamin D deficiency. Hypophosphatemia, lowered concentrations of circulating vitamin D metabolites, increase in alkaline phosphatase, lowered intestinal absorption of calcium, and lowered bone mass have also been reported. Richens and Rowe reported pheneturide, primidone, phenytoin and phenobarbital as the anticonvulsant drugs most commonly associated with hypocalcemia. Vitamin D supplementation was effective in the treatment of both rachitic and osteomalacic changes in bone. These observations led to the study of the effects of phenytoin (Dilantin®) on the metabolism of the labeled vitamin D_3 and 25-(OH)-vitamin D_3. Short-term experiments in rats showed that both vitamin D_3 and its metabolite disappeared more rapidly from the serum of phenytoin-treated animals than of controls. Villareale *et al.* studies interactions between vitamin D_3 and phenytoin in chicks and concluded that phenytoin acts on the metabolism of vitamin D_3 or on tissue responses to the vitamin. Gascon-Barré and Côté have shown that a 21-day pretreatment of rats with phenobarbital or phenobarbital-phenytoin, but not phenytoin alone, increased the LD_{50} of acutely administered vitamin D_3; the median time to effect was also prolonged. Both of these findings are consistent with an effect of these anticonvulsants on vitamin D_3 metabolism. Gascon-Barré and Glorieux have shown that the total excretion of tritiated 25-(OH)-vitamin D_3 is greater in phenobarbital-treated animals than in controls.

The interrelationships between combined hypervitaminosis A and D were explored by Clark and Bassett. Young and adult rats were intubated with vitamin D_2 and vitamin A palmitate in sesame oil. In animals dosed daily with 18,000 IU vitamin D_2 (about 180,000 IU per kg) and 30,000 IU vitamin A for 60 days the growth rate and survival rate were better than in other rats receiving the same amount of vitamin D and 3,000 IU of vitamin A or less, and there was less calcification in the soft tissues and less osteolytic action in the animals given the higher dose of vitamin A. There were no animals given vitamin A without large amounts of vitamin D. In a study by Taylor *et al.* day-old chicks were fed for 4 weeks on diets containing 4 levels of vitamin D and vitamin A (1, 10, 100, and 1,000 times the basal level in all 16 combinations), with the object of investigating a possible antagonism between the two vitamins. At level 1 the chicks were consuming, at the start of the experiment, about 750 IU of vitamin D per kg body weight per day and at level 1,000, about 750,000 IU per kg per day. Only diets containing 1,000 times the basal level of one or both vitamins depressed growth and induced significant changes in blood calcium, inorganic phosphate and acid phosphatase.

Views of Official Bodies

In 1963 the Committee on Nutrition of the American Academy of Pediatrics reviewed the relevant literature on vitamin D and issued a statement of policy. In part, the Committee concluded that because of the prevalent practice of food fortification in the United States and Canada, there was a definite possibility that the individual, even the young infant, may ingest considerably more than the recommended vitamin D allowance, and intakes of 2,000 or 3,500 IU per day were possible, particularly beyond infancy. The Committee also pointed out that although there has been no specific evidence that intakes of this order produce deleterious effects beyond infancy, the long-term consequences of this new nutritional situation on older children or adults are entirely unknown. The Committee stated that the practice of enriching foods other than milk and infant formula products is not justified, and discontinuation of fortifying other foods was recommended.

In 1967 a review and policy statement on vitamin D were prepared by Fraser in consultation with the Committee on Nutrition of the American Academy of Pediatrics and endorsed by it. It was concluded that the evidence concerning infantile hypercalcemia did not alone provide justification for extensive change in national policies relating to vitamin D. However, it was recommended that there be sensible moderation in consumption of vitamin D at all ages because the potential toxicity of vitamin D after long-term intakes, that exceed requirements by several orders of magnitude, was still unknown.

In 1973 the Food and Nutrition Board of the National Academy of Sciences issued a policy statement, superseding theirs of 1968, on improvement of the quality of foods. The Board continued its endorsement of the enrichment, fortification, and restoration of the nutritional value of certain foods,

including the addition of vitamin D to milk, fluid skim milk and nonfat dry milk.

In 1975 the Committee on Nutritional Misinformation of the Food and Nutrition Board issued a report which included the conclusion that "excessive amounts" of vitamin D are hazardous and only individuals with diseases affecting vitamine D absorption or metabolism require more than 400 IU per day; such needs should be established by clinical evaluation, and treatment should be specifically recommended and supervised by physicians.

It is to be noted that in 1977 the Food and Drug Administration proposed deletion of the provision for use of vitamin D as an optional ingredient in enriched rice, pointing out that such additon would serve only to increase the exesssive levels of intake of the vitamin. (Reg. 1.)

The Select Committee has carefully evaluated all the available safety information on vitamins D_2 and D_3. In the Select Committee's opinion:

In the absence of adequate exposure to sunlight or equivalent light, dietary intake of vitamin D is required for maintenance of health. Vitamin D occurs naturally in fish and fish oils, eggs, liver and dairy products. The amounts naturally present in dairy products are generally inadequate to meet the requirement and vitamin D_3 is added to evaporated milk, infant formulas and to most fresh fluid cow milk sold by dairies. In addition, vitamin D_3 or vitamin D_2 is commonly added to margarines, to certain breakfast cereals and to a few other foods. Fortification of milk with vitamin D_3 since the 1920s has been credited with the marked reduction in incidence of rickets.

The estimated requirement for vitamin D in the absence of exposure to ultraviolet light is believed to be 100 to 200 IU per day and the Recommended Dietary Allowance of the Food and Nutrition Board, National Research Council, is 400 IU per day. From food sources of vitamin D (naturally occurring or added) it is unlikely that an infant would receive more than 1000 IU per day (perhaps 200 IU per kg per day), a preschool child more than 2000 IU per day (less than 200 IU per kg per day) or an adult more than 5000 IU per day (less than 100 IU per kg per day). However, better estimates of current intakes of vitamin D from dietary sources should, in due course, be developed.

Unequivocal manifestations of vitamin D toxicity including vascular effects have not been reported from consumption of foods including foods fortified with the vitamin. Observations on patients undergoing vitamin D therapy have shown that intakes of vitamin D 1000 IU per kg per day or more (at least 60,000 IU per day for a 60 kg adult) have in some instances been associated with evidence of toxicity. Studies of individuals with disorders qualifying them for disability pensions suggest that long-term ingestion of vitamin D in excess of 1000 IU per day may be a factor in the occurrence of myocardial infarction. However, for the adult there is relatively little likelihood of consumption of such amounts of vitamin D from that currently added to food.

The only suggestions that toxic effects may be produced by intakes of vitamin D less than 1000 IU per kg per day concern two special problems of infants: (1) Such intakes may interfere with linear growth, and (2) the rare disorder, idiopathic hypercalcemia, may be caused by or aggravated by such intakes. For reasons detailed in the body of this report, the Select Committee finds unconvincing the few reports which attribute interference in linear growth to intakes of vitamin D less than 1000 IU per kg per day. The incidence of idiopathic hypercalcemia is estimated to be 1 in 20,000 births for all forms of the disorder and 1 in 275,000 births for the severe form. This incidence is low and must be considered in relation to the demonstrated desirability of fortifying foods with vitamin D. The Committee recognizes also that vitamin D intake may aggravate the manifestations of idiopathic hypercalcemia but considers it unlikely that there is a causal relationship.

At the same time, it is evident that the margin of safety between intakes currently achieved by some infants from all sources (perhaps 200 IU per kg per day) and the amounts (1000 to 3000 IU per kg per day) that may produce toxic manifestations in otherwise normal infants is relatively low. There is strikingly little information on the effects of moderate overdoses of vitamin D, particularly in the range of about 200 to 3000 IU per kg per day for all age groups. Additional data are needed for evaluation of the safety of vitamin D in this dosage range. Moreover, evaluations should recognize that relatively long periods are required for adverse effects of vitamin D to become recognizable. Thus, there appears to be a need to limit intakes of vitamin D from all sources, including food and vitamin preparations (Ref. 2).

The Select Committee concludes that no evidence in available information on vitamin D_2 and vitamin D_3 demonstrates, or suggests reasonable grounds to suspect, a hazard to the public when they are used in food at levels that are now current and in the manner now practiced. However, the Select Committee also states that it is not possible to determine, without additional data, whether a significant increase in consumption of these substances would constitute a dietary hazard (Ref. 3).

FDA has undertaken its own evaluation of the available information and, insofar as vitamin D_2 and vitamin D_3 are used as nutrients in conventional foods, agrees with the conclusion of the Select Committee. Based upon available safety data, the agency concludes that vitamin D_2 and vitamin 3 should be affirmed as GRAS with specific limitation placed upon their use. FDA shares the Select Committee's concern that the margin of safety for infants appears to be relatively low.

FDA has evaluated the available data and estimates that the levels of use of vitamin D proposed in this document will result in an average lifetime exposure of about 200 to 300 international units per day (IU/day) for individuals between the ages of 2 to 65 (Ref. 4). This estimate is an approximation because it represents a daily average lifetime exposure and does not address short-term fluctuations in eating habits that could result in significantly higher or lower consumption. This estimate also does not address the potentially elevated consumption of vitamin D by young children over a period of several years during childhood.

The Select Committee estimates that daily consumption of vitamin D from food sources (both added and naturally occurring) is unlikely to exceed 1,000 IU/day for infants or 5,000 IU/day for adults. FDA believes that these estimates by the Select Committee represent reasonable upper limits on daily consumption, and that day-to-day fluctuations in diet are unlikely to result in higher consumption levels. However, as discussed above, the agency's estimate represents likely average lifetime consumption levels. Therefore, FDA believes that these two sets of estimates are neither incompatible nor mutually exclusive.

FDA ordinarily bases its GRAS affirmation proposals on consumption information compiled in the 1971 NAS/NRC survey of food manufacturers. However, the Select Committee indicates in its conclusion that the NAS/NRC data on the amount of vitamin D_2 and vitamin D_3 used annually in the United States lead to consumption estimates that are unrealistically high. The agency agrees with this assessment but also believes that the NAS/NRC survey information should not be dismissed without further consideration. In an attempt to clarify this issue, FDA requested that NAS/NRC reevaluate its survey information to identify potential sources of error. NAS/NRC responded that its survey information on vitamin D_2 and vitamin D_3 probably contained inaccuracies such as failure to account for dilution of multiple strength solutions and failure to differentiate between use in human food, in animal feed, or in dietary supplements (Ref. 6).

FDA believes this explanation of the NAS/NRC survey data is plausible but not conclusive. Dr. A. W. Norman (Ref. 5) noted that industrial preparation of vitamin D produces several chemically similar compounds that are difficult to separate, and that, consequently, vitamin D is marketed as an impure resin rather than as the crystalline material, at least for use in animal feeds. the agency is concerned that food processors may be using this impure resin as if it were pure crystalline

vitamin D_2 or D_3 and that this practice may have contributed to the high estimates of vitamin D usage in the NAS/NRC report. Therefore, FDA requests additional information on the levels of vitamin D added to food, and information on whether the impure resin is used in food. The agency notes, however, that such a resin does not conform to the specifications for food-grade vitamin D_2 or D_3 presented in the Food Chemicals Codex, 3d Ed. (1981), and is not included in these proposed regulations.

The agency also is concerned about the magnitude of the overage of vitamin D (i.e., levels in excess of those stated on the nutritional label) that might commonly be added to certain foods to offset losses during processing or storage. This concern is based on information that overages are a common practice in the manufacture of fortified foods, as indicated by the Committee on Nutrition of the American Academy of Pediatrics (Ref. 7). FDA notes that regulations governing the addition of vitamin D to standardized foods do not permit overages of this vitamin beyond the limitations of current good manufacturing practice. Therefore, the agency requests that information on the overages of vitamin D added to foods be submitted as comments on this proposal.

Regarding the cardiovascular toxicity of vitamin D, the new study of Peng et al. (Ref. 8), reported the appearance of signs of arteriosclerosis in squirrel monkeys fed vitamin D_3, with or without high levels of cholesterol, for 10 to 18 months. The most significant effect, appearance of elevated atheromatous plaques, was observed in animals fed a combination of 500 IU vitamin D_3 plus 0.5 percent cholesterol daily. Animals fed 1,000 IU/day of vitamin D_3 (without cholesterol) showed slightly increased intimal thickening when observed under light microscopy. Animals fed 500 IU/day of vitamin D_3 (without cholesterol) showed cellular changes that were observable only under the electron microscope.

FDA tentatively has concluded that the results of this study provide an insufficient basis for altering FASEB's conclusions regarding the safety of vitamin D because of the small number of animals used, and because no information was presented on the purity of the vitamin D_3 used in the study. Additionally, no independent corroboration of these results has been reported by other investigators. However, FDA is aware of concerns raised by previous studies that have suggested links in humans between vitamin D and hypercholesterolemia (Ref. 9) and between vitamin D and myocardial infarction (Ref. 10). The agency notes that similar concerns have been expressed editorially by Peng and Taylor (Ref. 11).

FDA has carefully evaluated two recent short papers which were not reviewed by the Select Committee but which purport to demonstrate a relationship between vitamin D_3 administration and the appearance of mammary tumors in mice (Refs. 12 and 13). The first study (Ref. 12) investigated directly the carcinogenic activity of vitamin D_3 in the mammary gland of mammary tumor virus-infected mice. The study purports to show the effect on the latency period. However, it is a preliminary study with technical deficiencies and is unsubstantiated by further work. The second study (Ref. 13) indicated that vitamin D_3 may have some weak estrogenic activity. However, no tumors were reported, and FDA concludes it is not valid to consider vitamin D_3 a carcinogen based upon a potential weak estrogenic activity. Therefore, the agency has concluded that it is inappropriate to take any regulatory action based on these two studies. Although the Select Committee did not specifically address the issue of carcinogenicity in its opinion on the safety of vitamin D_2 and vitamin D_3, it did cite the results of earlier work that indicated that studies of the carcinogenicity of vitamin D were negative. Although FDA encourages further study of this problem, and solicits any additional information that may be available in response to this proposal, the agency believes that the results of these two studies, as well as those reviewed by the Select Committee, do not provide evidence that vitamin D is a carcinogen.

In view of FDA's and the Select Committee's agreement that limitations on vitamin D consumption are warranted, FDA is interested in maintaining an up-to-date knowledge of the consumption, purity, and toxicity of vitamin D, including information on studies in progress. Therefore, FDA requests comments and additional information from industry, the scientific community, and all other interested parties to supplement the agency's knowledge concerning these matters.

FDA estimates that typical exposures to vitamin D from additon of this ingredient to conventional foods at the levels proposed by this document are about 200 to 300 IU/day for an adult and about 300 to 400 IU/day for an infant (Ref. 4). The agency concludes that these levels of use represent current good manufacturing practice, are safe, and may be affirmed as GRAS.

The food categories in which use of vitamin D is being proposed for affirmation as GRAS are primarily those that were reported in the NAS/NRC Phase II survey. However, FDA is unaware of any current use of vitamin D in nonalcoholic beverages or beverage bases other than in milk and in infant formula, even though such use was reported in that survey. Therefore, FDA has not included this food category in this proposal. In addition, the agency believes that uses of vitamin D in sweet sauces, as reported in the NAS/NRC survey, refer to products used as flavorings for milk, and these uses have therefore been included in the "milk products" category. The agency solicits comments on these and other uses of vitamin D_2 and vitamin D_3 in foods.

FDA recognizes that dietary supplement preparations can be a significant source of dietary vitamin D in addition to that that is added to conventional foods. FDA shares the Select Committee's concern that daily intake of vitamin D from all sources may be approaching potentially toxic levels, especially for small children. Based on FDA's estimate of consumption for vitamin D in food, the daily consumption of a multiple vitamin tablet that contains the recommended daily allowance of vitamin D (400 IU/day) would approximately double the exposure of a child. A separate report written by Dr. Herman I. Chinn of the Life Sciences Research Office of FASEB, completed at the request of FDA, expressed a similar concern (Ref. 14). FDA's concern about the levels of vitamin D consumed has been heightened by a recent report of toxicity in two small children given high doses of vitamins A and D (Ref. 15). The two cases involved in this report appear to have resulted from excessive use of dietary supplements and also appear to be isolated incidents. FDA is unaware of any widespread hazard associated with vitamin D in dietary supplements. However, because the NAS/NRC survey did not specifically request use data on dietary supplement uses, FDA does not have adequate data upon which to judge the exposure to vitamin D_2 and vitamin D_3 resulting from their use as dietary supplements. Without such exposure data, the agency cannot evaluate the safety of the use of these ingredients in dietary supplements and, therefore, can take no action at this time on the GRAS status of vitamin D_2 and vitamin D_3 for this use. Therefore, FDA is taking action on the listing of these ingredients in Subpart F of Part 182 as dietary supplements.

Copies of the scientific literature review on vitamin D, the report of the Select Committee on vitamin D_2 and D_3, and the mutagenicity evaluations of vitamin D_2 (ergocalciferol) and vitamin D_3 (cholecalciferol) are available for review at the Dockets Management Branch (address above) and may be purchased from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161, as follows:

Title	Order No.	Price code	Price [1]
Vitamin D_2 and D_3 (Select Committee report).	PB293-099/AS	A03	$7.50
Vitamin D (scientific literature review).	PB234-901/AS	A21	34.50
Mutagenicity evaluation of vitamin D_2 (ergocalciferol).	PB81#127-821	A03	7.50s
Mutagenicity evaluation of vitamin D_3 (cholecalciferol).	PB81#125-338	A03	7.50

[1] Price subject to change.

The format of the proposed regulations is different from that in previous GRAS affirmation regulations. The agency has modified the form in which the specific limitations on the use of these ingredients is presented. This change has no substantive effect but is made merely for clarity.

This proposed action does not affect the current use of vitamin D_2 and vitamin D_3 in pet food or animal feed.

References

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons from 9 a.m., Monday through Friday.

1. "Evaluation of the Health Aspects of Vitamin D_2 and Vitamin D_3 as Food Ingredients," Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20014, pp. 7–21, 1978.

2. *Ibid.*, pp. 22–23.

3. *Ibid.*, p. 23. s

4. Modderman, J., FDA Memorandum to L. Gosule, "Vitamin D. Estimated Consumption of Vitamin D Through Foods," June 16, 1981.

5. Norman, A. W., *Vitamin D: The Calcium Homeostatic Steroid Hormone* (Academic Press, 1979).

6. Rehwoldt, R. E., Letter of September 30, 1981, to L. C. Gosule.

7. Committee on Nutrition of the American Academy of Pediatrics, "Prophylactic Requirements in the Toxicity of Vitamin D," *Pediatrics*, 31:512, 1963.

8. Peng, S–K., C. B. Taylor, P. Tham, and B. Mikkelson, "Role of Mild Excesses of Vitamin D_3 in Arteriosclerosis. A Study in Squirrel Monkeys," *Arterila Wall*, 4:229, 1978.

9. Fleischman, A. I., L. Bierenbaum, R. Raichelson, T. Hayton, and P. Watson, *in* "Atherosclerosis: Proceedings of the Second International Symposium," p. 468, 1969.

10. Linden, V., "Vitamin D in Myocardial Infarction," *British Medical Journal*, 3:647, 1974.

11. Peng, S–K. and C. B. Taylor, "Probable Role of Excesses of Vitamin D in Genesis of Arteriosclerosis," *Arterial Wall*, 6:63, 1980.

12. Gass, G. M. and W. T. Allaben, "Preliminary Report on the Carcinogenic Dose-Response Curve to Oral Vitamin D_3," *IRCS Medical Science*, 5:477, 1977.

13. Titus, D. S., E. T. Creckman, M. J. Pace, V. R. Klinefelter, and G. M. Gass, "Estrogenic Activity of Oral Vitamin D_3 at Carcinogenic Dose Levels," *IRCS Medical Science*, 8:288, 1980.

14. Chinn, H. I. (Life Sciences Research Office, Federation of American Societies for Experimental Biology), "A Review of the Adverse Effects of Excessive Intakes of Vitamin D," 1979.

15. Lippe, B. L. Hensen, G. Mendoza, M. Finerman, and M. Welch, "Chronic Vitamin A Intoxication" *American Journal of Diseases of Children*, 135:634, 1981.

The agency has determined under 21 CFR 25.24(d)(6) (proposed December 11, 1979; 44 FR 71742) that this proposed 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.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposal would have on small entities including small businesses and has determined that the effect of this proopsal is to maintain current known uses of the substances covered by this proposal by both large and small businesses. Therefore, FDA certifies in accordance with section 605(b) of the Regulatory Flexibility Act that no significant economic impact on a substantial number of small entities will derive from this action.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this proposal, and the agency has determined that the rule, if promulgated, will not be a major rule as defined by the Order.

List of Subjects

21 CFR Part 182

Generally recognized as safe (GRAS) food ingredients, Spices and flavorings.

21 CFR Part 184

Direct food ingredients, Food ingredients, Generally recognized as safe (GRAS) food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), it is proposed that Parts 182 and 184 be amended as follow:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. Part 182 is amended:

§ 182.8950 [Removed]

a. By removing § 182.8950 *Vitamin D_2*.

§ 182.8953 [Removed]

b. By removing § 182.8953 *Vitamin D_3*.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

2. Part 184 is amended:

a. By adding new § 184.1950, to read as follows:

§ 184.1950 Vitamin D_2

(a) Vitamin D_2 ($C_{28}H_{44}O$, CAS Reg. No. 50–14–6), also known as ergocalciferol, is the chemical 9,10-seco(5Z,7E,22E)-5,7,10(19),22-ergostatetraene-3β-ol. It is produced by irradiation of ergosterol isolated from yeast and related fungi.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 344, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c)(1) In accordance with § 184.1(b)(2), the ingredient is used in food as the sole source of added vitamin D and is used only within the following specific limitations:

Category of food	Maximum levels in food (as served)	Functional use
Breakfast cereals, § 170.3(n)(4) of this chapter.	350 (IU/100 grams)	Nutrient supplement, § 170.3(o)(20) of this chapter.
Grain products and pastas, § 170.3(n)(23) of this chapter.	90 (IU/100 grams)	Do.
Milk, § 170.3(n)(30) of this chapter.	42 (IU/100 grams)	Do.
Milk products, § 170.3(n)(31) of this chapter.	89 (IU/100 grams)	Do.

(2) Vitamin D_2 may be used as the sole source of added vitamin D in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

(3) Vitamin D_3 may be used as the sole source of added vitamin D in margarine

in accordance with § 166.110 of this chapter.

b. By adding new § 184.1953, to read as follows:

§ 184.1953 Vitamin D_3.

(a) Vitamin D_3 ($C_{27}H_{44}O$, CAS Reg. No. 67-97-0), also known as cholecalciferol, is the chemical 9,10-seco(5Z,7E)-5,7,10(19)-cholestatrien-3-ol. It occurs in, and is isolated from, fish liver oils. It is also the form produced endogenously in humans through sunlight activation of 7-dehydrocholesterol in the skin.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d Ed. (1981), p. 345, which is incorporated by reference. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(c)(1) In accordance with § 184.1(b)(2), the ingredient is used in food as the sole source of added vitamin D and is used only within the following specific limitations:

Category of food	Maximum levels in food (as served)	Functional use
Milk, § 170.3(n)(30) of this chapter.	42(IU/100 grams)	Nutrient supplement, § 170.3(o)(20) of this chapter.
Milk products, § 170.3(n)(31) of this chapter.	89 (IU/100 grams)	Do.

(2) Vitamin D_3 may be used as the sole source of added vitamin D in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

(3) Vitamin D_3 may be used as the sole source of added vitamin D in margarine in accordance with § 166.110 of this chapter.

The agency is unaware of any prior sanction for use of these ingredients in foods under conditions different from those identified in this document. Any person who intends to assert or rely on such a sanction shall submit proof of its existence in response to this proposal. The action proposed above will constitute a determination that excluded uses would result in adulteration of the food in violation of section 402 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342), and the failure of any person to come forward with proof of an applicable prior sanction in response to this proposal constitutes a waiver of the right to assert or rely on it later. Should any person submit proof of the existence of a prior sanction, the agency hereby proposes to recognize such use by issuing an appropriate regulation under Part 181 (21 CFR Part 181) or affirming it as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

Interested persons may, on or before June 20, 1983 submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 31, 1983.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc.83-10161 Filed 4-18-83; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 201 and 429

[Docket No. 83N-0023]

Drugs Composed Wholly or Partly of Insulin; Advance Notice of Proposed Rulemaking; Request for Information

AGENCY: Food and Drug Administration.

ACTION: Advance notice of proposed rulemaking; request for information.

SUMMARY: The Food and Drug Administration (FDA) announces its intention to review its existing regulations on insulin, and based on this review, to propose appropriate changes in the regulations. This review is intended to meet the statutory and governmental requirements for the review of existing regulations. FDA recognizes that these particular regulations need revision in light of advances in the development of insulin preparations. This advance notice of proposed rulemaking is to give interested individuals and organizations an opportunity to submit their comments (1) for revising the regulations, and (2) on several specific issues concerning the packaging and labeling of insulin products as set forth in this document.

DATE: Comments by June 20, 1983.

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert D. Bradley, National Center for Drugs and Biologics (HFN-7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6490.

SUPPLEMENTARY INFORMATION: Section 506 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 356) requires that every drug composed in whole or in part of insulin be certified before the drug is placed on the market. Regulations providing for such certification, as directed by section 506 of the act, prescribe: (1) Standards of identity and of strength, quality, and purity; (2) tests and methods of assay to determine compliance with such standards; (3) effective periods for certificates and other conditions under which they shall cease to be effective as to certified batches; (4) administration and procedure; and (5) fees necessary to provide, equip, and maintain an adequate certification service (21 CFR Part 429).

Although there have been several revisions to Part 429 over the years, these revisions have not kept up with technological changes in the development of insulin products. Until recently, insulin for drug use in humans was obtained from the pancreatic glands of beef and pork. Firms preparing such products have developed manufacturing procedures capable of producing insulins that are highly purified. To distinguish these insulins from other less purified insulins, firms have been permitted to label these products as "purified insulin". Although standards for these "purified insulins" are set forth in individual new drug applications, regulations for certification of these products also need to be revised to include appropriate standards of quality and purity.

FDA has recently approved a new source of insulin called "human" insulin. Beef and pork insulin are obtained from the pancreatic glands of beef and swine, respectively. Human insulin, however, is not obtained from the pancreatic glands of humans but is produced by means of recombinant DNA technology or by enzymatic modification of pork insulin. All products identified as human insulin have the same molecular structure as insulin produced by the human body. However, because these human insulins are produced by different methods, the certification regulations need to be revised to set forth standards of quality and purity depending upon the method of production.

In addition to the above needed revision, the agency is also reviewing the insulin regulations to determine if other revisions are necessary to comply with the requirements of the Regulatory Flexibility Act (Pub. L. 96-354) and Executive Order 12291. The Regulatory

Flexibility Act requires each agency periodically to review its existing regulations to determine whether changes are necessary "to minimize any significant economic impact of the rules upon a substantial number of such small entities." Executive Order 12291 requires that each agency initiate a review of its current regulations, and applying specified criteria, determine whether the existing regulations should be retained without change, modified, or revoked.

Although the agency believes it could propose certain revisions at this time, several other issues that logically should be part of an agency proposal to revise the certification requirements for insulin would benefit significantly from public input before the formulation of specific proposals. Therefore, before publishing a proposed regulation, the agency is soliciting the views of insulin manufacturers, insulin users, and health professionals on various issues and is publishing this advance notice of proposed rulemaking to obtain these views. The agency encourages all interested individuals to submit comments to the agency on any or all of these issues. These issues are discussed below.

Distinguishing Strength, Duration of Action, and Source of Insulin

The current regulations provide for the certification of three strengths of insulin. Insulin containing 40 units per milliliter (U-40) and 100 units per milliliter (U-100) are certified for over-the-counter (OTC) use. Insulin containing 500 units per milliliter is sold for prescription use, primarily for use in hospitals, and will not be discussed further in this document. Before 1979, insulin was also available in 80 units per milliliter. Regulations providing for the certification of U-80 insulin were revoked on September 25, 1979 (44 FR 55169). Amendments to the regulations providing for the certification of U-100 insulin were first published in the Federal Register of November 15, 1974 (39 FR 40284).

In addition to preparing insulin in different strengths, different types (or formulations) of insulin products are also prepared. These types of insulin can be categorized as fast acting, intermediate acting, or long acting, based on the speed, duration, and intensity with which the insulin is available to the body following administration. The fast-acting insulins are Insulin Injection and Prompt Insulin Zinc Suspension. The intermediate-acting insulins are Isophane Insulin Suspension (also know as NPH insulin), Insulin Zinc Suspension, and Globin Zinc Insulin Injection. The long-acting insulins are Protamine Zinc Insulin Suspension and Extended Insulin Zinc Suspension.

When only U-40 and U-80 insulins were available, the regulations required a color coding scheme for labels and the use of different shaped vials to distinguish the different types and strengths of insulin. Because there were 7 variations for duration of action and 2 strengths, the color code provided for 14 different insulins. However, when the regulations were amended to provide for the certification of U-100 insulins, the agency concluded that vial shapes had lost their value as distinguishing characteristics and that to add 7 more color codes to the existing color scheme would be impractical. Therefore, the regulations provided that U-100 insulins, irrespective of the type, bear only black and white labeling while the vials to be used should be the normal round shoulder type. Thus, after the regulations were amended in 1979 to remove the provisions providing for the certification of U-80 insulins, only the different types of U-40 insulins were still required to be color coded and packaged in vials of different types.

The use of black and white labeling for U-100 insulins has been considered helpful in differentiating U-100 insulin from the other insulin strengths. However, the agency recently has received several suggestions and comments that there is now a need for labels to distinguish among different types of U-100 insulins (Refs. 1 through 4).

Two reasons are cited in support of the need for distinguishing between types of U-100 insulins. The first reason is because of the overwhelming acceptance of U-100 insulin. It is estimated that over 95 percent of patients use U-100 insulin. It is further estimated that in the next few years this figure may approach 99 percent. The other reason cited is the current trend in diabetes therapy to maximize blood glucose control through the use of multiple daily injections of two different types of insulin that are mixed at the time of injection. It is argued that providing for labeling differences among the different types of U-100 insulins would assist patients in assuring that the two appropriate types of insulin are being mixed. In nearly every instance where two insulins are mixed, one is short-acting, the other, intermediate. A diabetic that is supposed to mix, e.g., 20 percent short acting with 80 percent intermediate insulin, would be at risk of hypoglycemia if a mistake in choosing vails were made and, instead, injected a dose containing 80 percent short acting and 20 percent intermediate insulin.

The agency has received letters from two firms, each suggesting a different system to distinguish different types of U-100 insulin. One system would use colored labels and cartons for human insulin only, with different colors distinguishing different types of human insulin. In addition, this system also included a capital letter to identify further the type of insulin. Another suggestion was to distinguish only the type of insulin, not source, through the use of colors and capital letters. In this system, however, it was suggested that the capital letter be placed in a colored square on the label and carton with the rest of the label being black and white. Capital letters that have been suggested for use in such a system are "R" for Regular Insulin Injection, "N" for Isophane Insulin Suspension, "P" for Protamine Zinc Insulin Suspension, "L" for Insulin Zinc Suspension, "S" for Prompt Insulin Zinc Suspension, and "U" for Extended Insulin Zinc Suspension.

In anticipation of preparing proposed revisions to the insulin regulations, the agency requests comments from interested persons on the desirability or need for a system to distinguish strengths of insulin, types of insulin, and/or the source of insulin. Persons who believe a system to distinguish strength, type, or source of insulins is desirable or needed should suggest ways to achieve whatever distinctions may be necessary. In addition to comments on the general concept of the need to distinguish insulins for strength, type, and/or source, comments, opinions, and suggestions would be appreciated on the following questions:

1. In view of the very minimal use of U-40 insulins, is there any reason for maintaining the current color coding and/or different vial shapes for U-40 insulins?

2. Should the regulations specify a uniform system to distinguish between different types of U-100 insulin? What system (such as colored labels and/or capital letters printed over a colored background) should be used to accomplish this goal? If individual capital letters, as has been suggested, should be part of such a system, what letters should represent the different types of insulin?

3. Should the regulations specify or permit the use of a system for distinguishing different species of insulin, i.e., beef, pork, beef-pork combination, or human? If yes, how? Should such a system be in addition to a

system for distinguishing types of insulin?

4. Should the regulations specify or permit the use of a system for distinguishing the origin of human insulin? If yes, how?

5. Should the regulations specify or permit the use of a system to distinguish other characteristics of insulin, such as purity? If yes, what characteristics and how?

Assistance for Visually Impaired Diabetics

Because of the black and white labeling for all types of U-100 insulins, the overwhelming use of U-100, and the fact that more and more diabetics are being controlled by mixing two types of U-100 insulin, it has been suggested that tactile codes on insulin vials would greatly assist the visually impaired diabetic in distinguishing between the types of insulin. Suggestions have included the use of notches on the label, raised letters or dots on the label, and a band or collar applied to the neck of a vial. The agency would appreciate comments on the value of special tactile codes and, if considered worthwhile, how they should be implemented. Comments from blind persons and organizations representing the blind are particularly solicited. In submitting comments on this issue it would be helpful if at least the following points were discussed:

1. It is important to have a tactile code for visually impaired diabetics to distinguish short-acting from longer-acting insulins or would large capital letters be satisfactory for most visually impaired diabetics?

2. If tactile coding would be beneficial, what types of insulin should have tactile codes, i.e., should only fast acting be identified or should fast, intermediate, and slow all have specific tactile codes?

3. What would be a reasonable tactile coding system?

4. Should a tactile coding system be required or merely permitted as an option?

5. If permitted, should it be uniform or should each firm be allowed to develop its own system?

6. Rather than a system implemented by manufacturing firms, are there advantages to a system, such as one using distinctive bands or collars to distinguish fast-acting, intermediate-acting, and long-acting insulins that might be implemented by pharmacists?

Package Size

Currently, both U-40 and U-100 insulins are packaged in vials containing 10 milliliters of product. With the increased use of U-100 insulins, including their use by children, it has been suggested that a smaller size vial should be available for pediatric use to limit the number of entries through the rubber stopper of the vial. Comments on the desirability of having insulin available in vials of less than 10 milliliters are, therefore, also solicited.

In addition to submitting comments, suggestions, or data concerning the above issues or on other suggested changes, additions, or deletions to the current insulin regulations, the agency requests data concerning the economic effects of any of the possible revisions discussed above or that are submitted on response to this notice.

List of Subjects

21 CFR Part 201

Drugs, Labeling.

21 CFR Part 429

Administrative practice and procedure, Drugs, insulin, Labeling, Packaging and containers.

References

The following information has been placed in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. N. H. Block, Novo Laboratories letter, April 30, 1982.

2. Memorandum from Product Surveillance Branch dated March 31, 1982, enclosing a copy of Product Surveillance Report, Saint Bernadine Hospital, March 10, 1982.

3. C. N. Christensen, Eli Lilly Co. letter, April 14, 1982.

4. R. G. Pinco letter, April 19, 1982.

5. Minutes of meeting between Eli Lilly and FDA, August 13, 1982.

6. Keen, H., et al., "Colour Coding of Insulins," *British Medical Journal*, 2:48, July 7, 1979.

7. Cohen, M. R., "Error 166—Confusion over the New Insulins," *Hospital Pharmacy*, 16:41, 1981.

8. Kately, G. D., et al., "New Packaging of Insulins," *British Medical Journal*, 1:1488, June 1979.

9. C. W. Pettinga, Eli Lilly Co. letter, November 16, 1982.

10. J. L. Gueriguian memo to the Commissioner, April 22, 1982.

Interested persons may, on or before June 20, 1983, submit to the Dockets Management Branch (address above) written comments regarding this advance notice of proposed rulemaking. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 13, 1983.

Mark Novitch,

Deputy Commissioner of Food and Drugs.

[FR Doc. 83-10279 Filed 4-18-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

Public Comment and Opportunity for Public Hearing on Modified Portions of the Pennsylvania Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of certain program amendments submitted by the Commonwealth of Pennsylvania as modifications to the Pennsylvania Permanent Regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). These amendments relate to enforcement and penalty procedures.

This notice sets forth the times and locations that the Pennsylvania program and proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed at the public hearing.

DATES: Written comments must be received on or before 4:00 p.m., May 19, 1983 to be considered.

A public hearing on the proposed modifications will be held on request only, on April 26, 1983, from 1:00 p.m. to 5:00 p.m., or until all comments have been heard.

Any person interested in making an oral or written presentation at the hearing should contact Robert Biggi at the address and phone number listed below by the close of business four working days before the date of the hearing. If no one has contacted Mr. Biggi to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contracted Mr. Biggi, a public meeting, rather than a public hearing, may be held and the results of

the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand delivered to: Robert Biggi, Director, Pennsylvania Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L–4, Harrisburg, Pennsylvania 17101.

The public hearing, if held, will be held at the Penn Harris Motor Inn and Convention Center, at the Camp Hill bypass and U.S. 11 and 15, Camp Hill, Pennsylvania, in the Keystone-A Convention Room.

Copies of the Pennsylvania program, the proposed modifications to the program, a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSM Pennsylvania Field Office and the Office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Pennsylvania Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L–4, Harrisburg, Pennsylvania 17101.

Pennsylvania Department of Environmental Resources, Fulton Bank Building, Tenth Floor, Third and Locust Streets, Harrisburg, Pennsylvania 17120.

FOR FUTHER INFORMATION CONTACT: Robert Biggi, Director, Pennsylvania Field Office, Office of Surface Mining, 101 South 2nd Street, Suite L–4, Harrisburg, Pennsylvania 17101 Telephone (717–782–4036).

SUPPLEMENTARY INFORMATION: On January 25, 1982, Pennsylvania resubmitted its proposed regulatory program to OSM. On July 30, 1982, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved the program subject to the correction of ten minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the July 30, 1982, Federal Register (47 FR 33050–33080).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, Federal Register notice (47 FR 33050–33080).

Submission of Program Amendments

By letter dated March 29, 1983, OSM received from the Commonwealth of Pennsylvania, pursuant to the 30 CFR 732.17 procedures, certain revisions to the enforcement and penalty procedures to be implemented by the State. These revisions are contained in a policy statement which addresses monitoring, enforcement, and use of enforcement alternatives. The letter elaborates on some of the points made in the policy statement.

The section on monitoring explains that such monitoring consists of a combination of inspections and review of self-monitoring data submitted by the operator. It also defines complete and partial inspections.

The section on enforcement explains the overall policy of the Pennsylvania Department of Environmental Resources (DER) to use available enforcement mechanisms to abate violations, and to focus on the most serious environmental problems.

The section on the use of enforcement alternatives identifies in which instances cessation orders, abatement orders, recommended correction dates, and criminal prosecutions will be used by DER. The policy statement also explains how DER will use these mechanisms, and how their use related to penalty assessment.

The Secretary seeks public comment on these proposed amendments to the Pennsylvania program. If these amendments are approved, they will become part of the Pennsylvania program.

Additional Information

1. *Compliance with the National Environmental Policy Act:* Pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental document need be prepared on this rulemaking as State program decisions are exempt from compliance with the National Environment Policy Act, 42 U.S.C. 4321 *et seq.*

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: April 14, 1983.

J. R. Harris,

Director, Office of Surface Mining.

[FR Doc. 83–10387 Filed 4–18–83; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 946

Public Comment and Opportunity for Public Hearing on Modified Portions of the Virginia Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and the opportunity for a public hearing on the substantive adequacy of program amendments submitted by Virginia to: (1) Satisfy condition "q" relating to awarding of costs and attorneys' fees against the State in judicial and administrative proceedings imposed by the Secretary of the Interior on the approval of the Virginia Permanent Regulatory Program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and (2) correct an erroneous cross-reference in the Virginia surface mining law.

This notice sets forth the times and locations that the Virginia program and proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and information pertinent to the public hearing.

DATES: Written comments, data or other relevant information relating to Virginia's modifications to its program not received on or before 4:00 p.m. on May 19, 1983 will not necessarily be considered.

A public hearing on the proposed modifications has been scheduled for May 16, 1983, at the address listed under "ADDRESSES."

Any person interested in making an oral or written presentation at the hearing should contact Mr. Ralph Cox at the address or phone number listed below by May 9, 1983. If no person has

contacted Mr. Cox to express an interest in participating in the hearing by the above date, the hearing will not be held. If only one person has so contacted Mr. Cox by the above date, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand delivered to: Ralph Cox, Director, Virginia Field Office, Office of Surface Mining Reclamation and Enforcement, Highway 23, South, P.O. Box 626, Big Stone Gap, Virginia 24219, Telephone: (703) 523-4303.

The public hearing will be held at the Lebanon Area Office, Office of Surface Mining Reclamation and Enforcement, Conference Room, Flannagan and Carroll Streets, Lebanon, Virginia 24266.

Copies of the Virginia program, the proposed modifications to the program, a listing of any scheduled public meetings and all written comments received in response to this notice will be available for review at the OSM Offices and the Office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 "L" Street, N.W., Washington, D.C. 20240
Office of Surface Mining Reclamation and Enforcement, Highway 23, South, Big Stone Gap, Virginia 24219
Office of Surface Mining Reclamation and Enforcement, Flannagan and Carrol Streets, Lebanon, Virginia 24266
Virginia Division of Mined Land Reclamation, 620 Powell Avenue, Big Stone Gap, Virginia 24219

FOR FURTHER INFORMATION CONTACT: Ralph Cox, Director, Virginia Field Office, Office of Surface Mining, P.O. Box 626, Big Stone Gap, Virginia 24219, Telephone: (703) 523-4303.

SUPPLEMENTARY INFORMATION: On March 3, 1980, the Secretary of the Interior received a proposed regulatory program from the Commonwealth of Virginia. On October 22, 1980, following a review of the proposed program as outlined in 30 CFR Part 732, the Secretary approved in part and disapproved in part the proposed program (45 FR 69977-7000). Virginia resubmitted its proposed regulatory program on August 13, 1981, and after a subsequent review, the Secretary approved the program subject to the correction of minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the December 15, 1981 **Federal Register** (46 FR 61088-61115).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Virginia program can be found in the December 15, 1981 **Federal Register** (46 FR 61088-61115).

One of the minor conditions of the approval imposed by the Secretary was as follows:

Condition (q) requires Virginia to submit a copy of enacted law or otherwise amend its program to provide for the awarding of costs and attorneys' fees against the State in judicial and administrative proceedings consistent with section 525(e) of SMCRA.

On March 22, 1983, Virginia submitted an act passed by the Virginia General Assembly which amends §§ 45.1-249 and 45.1-251 of the Virginia Surface Mining Control and Reclamation Act (Virginia SMCRA) to satisfy condition "q" set by the Secretary in his conditional approval (Administrative Record No. VA 463). This act, which will be effective on July 1, 1983, if approved by the Secretary, amends the Virginia SMCRA to provide for the award of costs and expenses, including attorneys' fees, against the State in judicial and administrative proceedings.

Also, in the March 22, 1983 letter, Virginia submitted two additional proposed revisions to the Virginia SMCRA. One of the proposed revisions amends § 45.1-240 to correct an erroneous cross-reference in the Virginia SMCRA. The other proposed revision amends § 45.1-234 of the Virginia SMCRA to subject interim program operations to the penalty and enforcement provisions of §§ 45.1-245, 45.1-246, 45.1-247, 45.1-249, 45.1-250 and 45.1-251 of the Virginia SMCRA and the penalty and enforcement regulations implementing those sections. The latter amendment will be the subject of a separate **Federal Register** notice in the near future.

Thus, the Secretary requests comments on the substantive adequacy of the proposed amendment to satisfy condition "q" and on the adequacy of the one additional proposed revision to Virginia's statute.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: April 11, 1983.

J. R. Harris,

Director, Office of Surface Mining.

[FR Doc. 83-10388 Filed 4-18-83; 8:45 am]

BILLING CODE 4310-05-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[Docket No. 82-122; FCC 83-84]

Interconnection Arrangements Between and Among Domestic and International Record Carriers; Request for Further Comments

AGENCY: Federal Communications Commission.

ACTION: Decision on reconsideration of interim guidelines and request for further comments.

SUMMARY: This document announces the Commission decisions on petitions for reconsideration of orders implementing the Record Carrier Competition Act of 1981 (RCCA). For the most part, the Commission denied petitions for reconsideration because the petitions did not show good cause to change the interim guidelines adopted in the earlier orders except for two issues. The Commission is requesting further comments on whether a rate differential

should be required when record carriers offer less desirable international access to customers of the interconnected carriers than they offer to their own customers. By these actions, the Commission is seeking to implement the full and equal interconnection requirements of the RCCA.

DATE: Comments must be received on or before May 4, 1983.

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

FOR FURTHER INFORMATION CONTACT: Daniel F. Grosh, Common Carrier Bureau, (202) 632-6917.

List of Subjects in 47 CFR Part 61

Communications Common Carriers.

The orders for which reconsideration was sought were published at 47 FR 18883 May 3, 1982 and 47 FR 31270 July 19, 1982.

Memorandum Opinion, Order and Request for Further Comments

In the matter of interconnection arrangements between and among the domestic and International record Carriers; CC Docket No. 82-122.

Adopted: March 3, 1983.
Released: April 11, 1983.
By the Commission.

1. Before the Commission are petitions for reconsideration of our *Interim Order* [1] which implemented the requirements of the Record Carrier Competition Act of 1981 [2] (RCCA) and of our subsequent memorandum opinion and order which rejected tariff filings found to be in conflict with the *Interim Order* and the RCCA (*Rejection Order*).[3] (A list of the petitions, oppositions, and replies is set out in the Appendix.) For the reasons discussed below, we affirm the conclusions in the *Interim Order* in most respects, including the allocation formula for outbound international telex, the pro rata allocation for inbound international telex, the 15% discount for carrier-carrier interconnection, and the use of tariffs to implement prescribed interconnection arrangements. We do grant reconsideration with respect to the lawfulness of two "grandfathered" contracts and a request that we allow carriers to agree, on a bilateral, tariffed basis, to accept termination charges lower than those prescribed. We also request further comments on achieving dialing stage access parity.

[1] Interconnection Arrangements Between and Among the Domestic and International Record Carriers, 89 FCC 2d 928 (1982), review pending, *Western Union* v. *FCC*, D.C. Circuit No. 82-1502, filed May 4, 1982.

[2] Pub. L. No. 97-130, 95 Stat. 1687 (1981).

[3] 91 FCC 2d 483 (1982), review pending, *TRT* v. *FCC, et al.*, D.C. Circuits Nos. 82-1656, 82-1698, 82-1699, filed June 14, 1982.

Background

2. The Record Carrier Competition Act of 1981 (RCCA) repealed and replaced the former Section 222 of the Communications Act. The RCCA represents a ratification by Congress of the Commission's pro-competitive initiatives of recent years and an attempt to remove the restrictions upon entry and competition that the former Section 222 had imposed. Congress has concluded that, after a transitional period in which some rather complicated regulatory oversight will apply most domestic and overseas record services will be competitive and will require minimal regulation.

3. The former Section 222, adopted in 1943, authorized the merger of Western Union with its domestic competitors so as to create a monopoly domestic record carrier; it also required Western Union to divest its overseas operations as part of the price for this monopoly. In the years following 1943, a relatively rigid division grew up between domestic and overseas record services. Western Union offered domestic services, and originated and delivered international traffic. But it could not offer overseas service and was required to hand off outbound overseas traffic to the international record carriers (IRCs) for delivery in countries overseas. The handoffs and divisions of revenues for such service were subject to complex formulas.[4]

4. The IRCs were not so rigidly confined. Although they concentrated on international service, they also operated offices in "gateway" cities and were authorized to pick up and deliver messages and other traffic in those cities without the participation of a domestic carrier. They did not offer purely domestic service, however.[5]

5. In recent years, the Commission has tried to erase the line separating domestic from overseas record communications and to inject new competition into each of these markets.[6] Part of its effort was to attempt to let Western Union into the overseas business.[7] Another part was to get the IRCs into domestic service.[8] Still another part was to authorize new carriers, such as Graphnet, Inc., in both markets.[9] In part because of the reluctance of foreign governments to interconnect with new carriers, competition in the international market still is limited, with three carriers—ITT, RCA and Western Union International (WUI)—dominating the market.

[4] The former Section 222 had been interpreted as a perpetual bar to Western Union's participation in international service. *E.g.*, ITT v. *FCC*, 635 F. 2d 32 (2d Cir. 1980).

[5] For background on the scope of IRC operations, see *Western Union* v. *FCC*, 665 F. 2d 1126 (D.C. Cir., 1981).

[6] *See, e.g.*, Overseas Communications Service, CC Docket No. 80-632, 84 FCC 2D 622 (1980), seeking comments on whether AT&T should be authorized to provide international record service.

[7] Western Union Telegraph Co., 75 FCC 2d 461 (1960), *rev'd. sub nom. ITT World Communications* v. *FCC*, 635 F. 2d 32 (2d Cir. 1980).

[8] International Record Carriers' Scope of Operations, 76 FCC 2d 115 (1980), *aff'd sub nom. Western Union* v. *FCC*, 665 F. 2d 1126 (D.C. Cir. 1981).

[9] Graphnet Systems, Inc., 71 FCC 2d 471 (1979), *aff'd sub non. Western Union* v. *FCC*, 665 F. 2d 1112 (D.C. Cir. 1981).

A. The Record Carrier Competition Act

6. The purpose of the RCRA is to "promote the development of fully competitive domestic and international markets in the provision of record communications service." 47 U.S.C. 222(b)(1). See also H.R. Rep. No. 97-356, 97th Cong., 1st Sess 4 (1981). (House Report). The RCCA permits the FCC to authorize Western Union to compete with the IRCs in the international market. It authorizes the IRCs to compete with Western Union in the domestic market. It requires a record carrier having significant domestic and overseas operations to treat its own domestic and international services as if those services were provided by separate entities, and to interconnect with other carriers for domestic or international services upon the same rates, terms, and conditions it applies to its own services.

7. These are the permanent structural guidelines established by the RCCA. The RCCA also contains transitional mechanisms which are effective for three years after enactment. Specifically, the RCCA requires all record carriers to provide interconnection with other record carriers upon reasonable request and it directed the Commission to convene a meeting of the IRCs for the purpose of negotiating a "just, fair, and reasonable" interconnection agreement. 47 U.S.C. 222 (c)(1)(A)(i) and (c)(3)(A). Congress also provided that the agreement must contain both a formula for allocating revenues among the participating carrriers and a method for distributing inbound traffic. Under Section 222(c)(2), the interconnection agreement must "establish a nondiscriminatory formula for the equitable allocation of revenues derived from [the use of interconnected facilities] between the parties to [the] agreement."

8. In adopting the RCCA, Congress was concerned that domestic

competition might be limited by the continued unwillingness of foreign administrations to interconnect with new IRCs. House Report at 10. Accordingly, it devised a method by which a carrier without a foreign operating agreement could interconnect with another IRC with such an agreement. That IRC would transit the outbound traffic to the foreign administration. The allocation of inbound traffic is governed by Section 222(c)(1)(A)(ii). In enacting that section, Congress was concerned that the foreign authorities' methods of allocating traffic inbound for the United States among the IRCs might have an inhibiting effect on competition. Believing that "in these situations, no free market exists" (House Report at 11), Congress provided that an originating carrier that has interconnected with another IRC (a "transiting carrier") to provide outbound international service is entitled to a pro rata share of the transiting carrier's inbound traffic. 47 U.S.C. 222(c)(1)(A)(ii)(1). As noted above, the sections of the RCCA concerning interconnection arrangements, including international transiting and pro rata return flow, expire three years after enactment. The Commission would then retain its general regulatory authority over carrier interconnection, which is not diminished by the RCCA.

9. Congress insisted that these provisions be implemented rapidly. It directed the Commission to convene a meeting among record carriers within fifteen days, and required the carriers to conclude the agreement within a maximum of ninety days. 47 U.S.C. 222(c)(3)(A). In the event of a failure to agree within that time, Congress directed the Commission to issue an interim of final order establishing an agreement consistent with the purposes of the Act no later than ninety days following the date that the meeting between the carriers was originally convened. 47 U.S.C. 222(c)(3)(B).

10. Thus, the RCCA erased the ban on a single carrier providing both domestic and international record communications and it required full interconnection among carriers. Prior to 1981, domestic customers of the IRCs could not use their telex machines to call other domestic customers or to make international call via other IRCs. Western Union's customers could select an IRC for international calls, but were forced to pay higher rates than the IRCs' own customers because Western Union's domestic rate was added to the IRCs' unbundled country-to-country rate. Now, the IRCs and Western Union compete both domestically and internationally. A telex customer of any domestic carrier may select any IRC that it desires to transmit a message overseas and the rates of both carriers are unbundled. That transmission may involve a single carrier or it may, under the RCCA, involve as many as three different U.S. entities: the domestic carrier, the IRC chosen by the customer (the originating IRC), and the IRC that carriers the international call to the foreign administration (the transiting IRC). A telex customer may also call customers of other domestic record networks because the carriers are interconnected.

B. The Commission's Proceedings

11. The Commission convened a meeting of the major record carriers on January 8, 1982, but those carriers failed to reach an agreement within the forty-five day period. Accordingly, on February 25, 1982 the Commission issued a *Notice of Proposed Rulemaking* (NPRM) 47 FR 10863 (1982), which set forth tentative conclusions relating to the prescription of an interconnection agreement and requested comments. After receiving comments, and in light of the fact that the carriers still were unable to agree, the Commission issued its *Interim Order*. Among other things, that order provided an interim formula for allocating revenues from outbound traffic between interconnecting IRCs and an interim method for distributing revenues from inbound traffic. 89 FCC 2d at 961–67.

12. The *Interim Order* construed the RCCA as requiring each carrier which provides both domestic and international record communications services, and which has a significant share of the market for such services, to operate as if its domestic and international offerings were separate, and to interconnect with other carriers in a manner which is equal in type and quality to the interconnection between its separate domestic and international segments. Interconnection with other carriers is also to be made available at the same rates and upon the same terms and conditions. The *Interim Order* prescribed that carriers provide equal interconnection except in cases involving expensive system modification, technological impossibility or equipment unavailability, or unreasonable degradation of service. In those cases, generally equal or comparable interconnection was permitted.

13. For wholly domestic interconnected record traffic, the *Interim Order* adopted the carriers' view that the carrier on whose network the call was initiated would be the originating carrier. The originating carrier is responsible for setting forth the tariff rate, billing customers, and making an equitable allocation of revenues with the terminating carrier, i.e. the carrier on whose network the called party was located.

14. The Commission determined that the existing arrangement for handling interconnected international inbound transmission was reasonable and worth continuing. Under these arrangements, the U.S. international carrier hands off the call to a U.S. domestic carrier for delivery. The international carrier receives a payout from the foreign correspondent and compensates the domestic carrier. The *Interim Order* incorporated these arrangements into the prescription. In the case of outbound international calls, however, the carriers could not agree on which carrier (domestic or international) would perform the functions of the originating carrier. The *Interim Order* assigned this role to the international carrier selected by the customer to carry the message overseas. The international carrier is therefore responsible for tariffing through rates, billing the customer for through service, and compensating the domestic carrier for use of its network.

15. The RCCA also calls for the establishment of a nondiscriminatory formula for the equitable allocation of revenues derived from interconnection. To the extent possible, this allocation is to be based upon costs. The IRCs argued that there are substantial savings to Western Union in providing carrier-to-carrier interconnection, while Western Union contended that there are no significant savings. Without finally resolving this question, the Commission prescribed an interim 15% discount from a domestic carrier's publicly tariffed intra-network domestic rate, as the rate for the performance of interconnected terminating functions on inter-network domestic calls and as the rate for the domestic component of outbound or inbound international calls. The Commission emphasized, however, that this prescription would not prejudge any action that may be taken in any existing or future phases of CC Docket No. 78–97, an ongoing investigation of WU's rate of return and rate structures for telex and TWX services.

16. The RCCA also sought to overcome the difficulties experienced by new carriers in obtaining operating agreements with foreign administrations. It required the tariffing of transiting arrangements for outbound international record services and a pro rata traffic distribution for inbound international record services. The

Interim Order applied these provisions to require that where IRCs interconnect to handle outbound transiting telex traffic, the originating outbound IRC without an operating agreement would pay the transiting carrier an amount equal to the foreign payout + ½ the domestic carrier's charge + ½ of the transiting carrier's international component after the foreign payout has been subtracted. In no case, however, may the originating international carrier's share remaining under the formula (i.e., ½ the domestic carrier's charge + ½ the international carrier's charge after the foreign payout has been subtracted) be less than the amount of the domestic component charge, which the originating outbound international carrier must pay the domestic carrier. For inbound international record traffic, the Commission prescribed that an originating outbound carrier lacking a foreign agreement would be allocated revenues based upon the same pro rata share of inbound traffic as it delivered for outbound carriage. This allocation would be calculated on a country-by-country, service-by-service basis. The allocation of revenues between originating and transiting IRCs would generally follow the arrangement prescribed for outbound traffic.

17. The Commission ordered the IRCs to implement the *Interim Order* by filing interconnection tariffs in conformity with its terms within twenty days. After the Common Carrier Bureau granted a brief extension of time, the IRCs complied. However, upon reviewing the IRC filings, the Commission concluded in the *Rejection Order* that they violated the *Interim Order* in numerous important respects. Consequently, it rejected the tariffs and required the IRCs to file tariff revisions by June 16, to become effective on June 20. In order to resolve these matters promptly, the Commission prescribed specific tariff language for telex and TWX interconnection to implement the *Interim Order* and the goals of the RCCA. Application of the formula minimum (the requirement that the outbound originating carrier receive no less than the domestic component charge) and of the pro rata provision were stayed pending appeal by the Court of Appeals for the D.C. Circuit, *TRI* v. *FCC, et al.*, Docket Nos. 82–1658, 82–1698, 82–1699, decree entered July 2, 1982.

Discussion

18. The petitions for reconsideration address a variety of issues arising from both the *Interim Order* and the *Rejection Order*. We will discuss the petitions and the positions of the parties on an issue-by-issue basis.

1. *Use of Tariffs To Implement the Interconnections Arrangements*

19. Under Section 222(c)(3)(A) of the RCCA, the major record carriers were made parties to negotiation meetings presided over by the Commission, and were allowed a total of ninety days to negotiate an interconnection agreement. Had the carriers reached an agreement, it would have been subject to Commission review to assure that it was consistent with the RCCA and did not unjustly or unreasonably discriminate against any record carriers. When the carriers failed to agree, the Commission became obligated "to issue an interim or final order which establishes a just, fair, reasonable and nondiscriminatory agreement . . ." *Id.* The Commission's *Interim Order* met this obligation by prescribing terms for interconnection. The order's conclusions were then implemented by requiring the filing of interconnection tariffs by the major record carriers upon an expedited schedule. As already noted, when the filed tariffs proved inconsistent with the *Interim Order*, the Commission rejected them and prescribed specific tariff language which the carriers were required to file in revised tariffs. Except for the provisions which were stayed by the Court of Appeal, the revised tariffs are currently in effect.

20. WUI contends that the Commission erred when it required that inter-carrier relationships be governed by tariffs. It asserts that when Congress stated in the RCCA that the Commission shall issue an order "which establishes an agreement," it was requiring that interconnection should be governed by intercarrier contracts. WUI contends that the Commission's actions have required WUI to submit to tariffs which might be changed unilaterally, and deprived WUI of a contractual remedy in the event of an unilateral change or a breach of the interconnection agreement. While WUI has no objections to "explanatory" tariffs which inform the public of the interconnection arrangement, it requests that interconnection terms be embodied in written carrier contracts.

21. We think it clear that WUI misunderstands the regulatory process we have instituted. Although embodied in tariffs, interconnection arrangements are not subject to unilateral carrier action, as WUI believes, but are constrained by the prescriptions in our *Interim Order* and *Rejection Order*. These orders are binding on record carriers. Any attempt to change the tariff in violation of the formula prescribed by the Commission would be subject to rejection unless and until the Commission modifies its prescription or the prescription becomes stale or the Commission grants a waiver. Thus, the prescriptions embodied in the tariffs cannot be altered by a unilateral filing, as WUI contends, but only by the Commission's decision that a change is just, reasonable, and non-discriminatory. The tariffs are thus in operational effect indistinguishable from the "explanatory" tariffs of which WUI approves. They give public notice of the terms of the Commission's prescription and may not vary therefrom. For example, when we found that the tariffs filed by WUI and the other IRCs did violate the *Interim Order*, we rejected them promptly and out of hand.

22. As a practical matter, use of the tariff process provides a sound and well understood procedural mechanism for implementing interconnection prescriptions. Tariff filings allow for full public scrutiny of the implementation of our prescriptions and enabled us to take immediate action to enforce the prescriptions. Although we could have used contracts for this purpose, we have no specific provision in our Rules for review of carrier contracts. Cf. 47 CFR 43.51. In order to allow the necessary opportunity for public examination and comment on contracts, we would have been forced to establish a contract review process to perform the same function the traditional tariff review process already performs so well. It also would have resulted in no difference in procedural rights. Either contracts or tariffs could be rejected as unlawful under our orders, and any aggrieved party could bring a complaint under Sections 206–209 of the Communications Act before a federal district court or this Commission seeking damages for any unlawful act.

23. This Commission has discretion to regulate the interrelationship between carriers by means of either tariffs under Section 203–205 of the Act or contracts under Section 211. *Lincoln Telephone and Telegraph Company* v. *FCC*, 659 F.2d 1092 (1981). See also *ENFIA*, 71 FCC 2d 440 (1979). Nothing in the legislative history indicates that Congress had any preference for one form of regulation or the other. Nor does the legislative history indicate any intent to alter the Commission's discretion as to which procedural tool (tariffs or contracts) it would employ. Rather, the House Report, at 7, expressly states the RCCA "should not be construed as affecting the Commission's authority under any of the other sections

of the Communications Act of 1934, as amended."[10]

24. In sum, the use of tariffs to implement the prescribed interconnection arrangements is a reasonable means, and we believe the best means, of carrying out the Commission's responsibilities, as our actual experience has confirmed. The prescribed interconnection tariffs currently in effect guarantee full interconnection to all record carriers on equal terms. We find no merit in WUI's objections.

2. *Allocation Formula*

25. The RCCA allowed the major record carriers to negotiate a just and reasonable formula for allocation of revenus as part of a interconnection agreement. When the carriers failed to reach such an agreement this Commission assured the responsibility to prescribe such a formula and other terms for interconnection within the 45 day period specified in Section 222(c)(3)(B). This action was undertaken on an expedited basis in response to the Congressional concern that any revenue allocation formula for interconnected traffic be implemented promptly. House Report at 11.

26. In developing the formula for outbound traffic between interconnecting IRCs in the *Interim Order* the Commission first reviewed the legislative history. It concluded that the existing formula for splitting revenues reflected "the greater bargaining power of carriers that have obtained the necessary foreign operating agreements" and that Congress intended "to redress the imbalance between those carriers which have managed to enter into agreements with foreign operating authorities and those carriers which have not." 89 FCC 2d at 961–62. With this Congressional intent in mind, the Commission adopted a formula which was similar to one proposed by RCA and explicitly endorsed by ITT. No other IRC objected to RCA's proposal. Under this proposal, two IRCs interconnecting to provide international service would share equally the revenue remaining after the payout to the foreign government (i.e., there would be a 50/50 split) with a minimum payment to the transiting IRC of 30 cents per minute. *Id* at 962.

27. The Commission accepted the IRC's proposal with certain modifications. The Commission adopted a formula which first required the originating outbound IRC to pay the transiting IRC the amount of the payout to the foreign administration. Second, the originating outbound IRC would pay the transition IRC ½ of the applicable domestic rate plus ½ of the transiting carrier's international rate after subtracting out the amount of the foreign payout. Third, the originating outbound IRC would also pay the domestic carrier the applicable rate for the domestic haul. In effect, the formula, like the one proposed by RCA, required a 50/50 split of the post-settlement collection, and required the originating outbound IRC to pay the domestic charges out of its half. Fourth, the originating carrier's division under the formula is subject to a "floor" which requires in all cases that such share must be no less than the domestic charge.[11]

28. The major IRCs, ITT, RCA, WUI, TRT, and FTC have expressed varying degrees of opposition to the formula itself. However, their primary challenge centers about the addition of the "floor." The IRCs argue that the floor will often leave the transiting carrier with less than a 50% share of the total U.S. retained revenue and, in some cases, with an amount which does not cover the costs of providing service. They also assert that the Commission's proposal appears to premise the compensation for the transiting carrier on the revenue actually collected and argue that the originating carrier could set its customer rate so low that the transiting carrier would be denied any compensation.

29. We believe the objections raised by the IRCs to the floor are based to a large extent upon a misunderstanding of how the floor in the Commission's formula will operate. The formula determines how much the originating international carrier must pay the transiting carrier and the domestic carrier. The decision of an originating carrier to raise or lower its rates will affect the amount it receives for handling an international call but will have to impact upon the amounts it must pay to the other carriers who participate with it carrying this traffic. This is because the formula, including the floor, is based solely on the charges of the transiting carrier and the domestic carrier and is completely independent of the rates charged by the originating international carrier to its own customers. In this respect, the Commission's formula is identical to the formula proposed by RCA. There is thus no substantial possibility of manipulation of the formula by the originating carrier to secure an unfair advantage over the transiting carrier.

30. The establishment of a floor was necessary to protect the originating carrier from either out-of-pocket losses or erosion of its revenues for providing the domestic haul. Although, as already noted, the amount the originating carrier receives is based on its own rates and not upon the division under the formula, we believe that as a practical matter the rates the originating carrier can charge are constrained by the rates of other international carriers—primarily the IRCs who have operating agreements. Customers are unlikely to rely upon a carrier without an operating agreement when they can obtain the same service directly and more cheaply from the carrier which has the necessary foreign authority. For this reason, we have assumed that a carrier requiring transiting cannot realistically charge more for its service as a general rule (and it may well be compelled to charge less) than the rates of the transiting carrier itself.

31. Assuming that the originating carrier charges the same rate as the transiting carrier, the floor insures that the originating carrier will not suffer an out-of-pocket loss in handling traffic for which the domestic portion of the charge must be paid to a separate carrier.[12] Where the originating carrier is also the domestic carrier, the floor seeks to ensure that the originating carrier is not penalized for being selected by the customer as the carrier to provide international service. Thus, with the floor, the carrier providing the domestic haul does not lose part of its domestic revenues because it is also selected as the international carrier.

32. In all cases where the floor is applied, the originating carrier receives nothing for the provision of the international haul. On the other hand, in all cases where the floor is applied, the transiting carrier receives the same amount as it would have received had it been selected by the customer to provide international service. In other

[10] See, Cong. Rec. E1034 (daily ed. March 17, 1982) (remarks of Rep. Wirth): "All of the powers of the Commission remain, those in Section 201, as well as those contained in other sections of the act."

[11] There is no similar "floor" for the foreign payout, because where the domestic floor applies a transiting IRC will not in any case get less than the share of the international rate that it had negotiated with the foreign administration in question. In some cases, the negotiated foreign payout exceeds the United States IRC's total international segment rate even without regard to the floor. The IRC makes up the loss from traffic in the other direction. The floor would not change this negotiated revenue loss, but it also would not cause it.

[12] Conversely, where the originating carrier decides to charge a lower rate than the transiting carrier, it is not protected from suffering an out of pocket loss. There is accordingly no possibility of manipulation by the originating carrier through charging very low rates. As a general matter, it cannot pass its losses off to the other carriers participating with it in the haul of international traffic.

words, the transiting carrier will receive no less revenue when the floor is applied than if it had provided the service itself rather than as a transiting carrier.

33. Properly understood, the floor cannot be regarded as inequitable or unfair to the transiting IRCs. To the contrary, we believe that the floor is a necessary adjustment to any reasonable formula, that it will help promote competition by fostering open entry, and that it will help carry out the intent of Congress in enacting the RCCA to redress the imbalance between carriers that have operating agreements and those that do not.

34. The one example that ITT has proposed to show how the floor supposedly would harm it provides an excellent illustration of why the floor is necessary. Under ITT's tariffs, the charge for service to Japan is $1.83 for the international segment. The foreign payout to the Japanese administration is $1.81. The domestic segment, which may be provided by any domestic carrier inlcuding ITT, is approximately $.40.[13] If no transiting arrangement were involved, ITT would pass on the $.40 to the domestic carrier, pay Japan $1.81 as the foreign payout, and retain two cents as its own share of the revenues. Under the formula, where another carrier was the originating international carrier, ITT would receive the foreign payout of $1.81 to pay the Japanese administration, plus half the domestic charge and half the two cent retention, or $.21 ($.40 plus $.02 divided by two.) However, because this would leave the originating carrier, with only $.21 under the formula and the originating carrier, not ITT, would have to pay $.40 to the domestic carrier, the floor would be applied. As a result of the floor, the originating carrier would be entitled under the formula to the amount of the domestic charge, $.40, but would then pay all of this to the domestic carrier. It would have zero net revenue. ITT, on the other hand, would retain the same two cents it would have gotten if it had provided the service itself without the participation of another carrier using its transiting services.

35. Without the floor, ITT would retain $.21, or more than ten times as much as it retains for an ordinary call made by a customer of its own. Assuming the originating carrier would have to match ITT's rate to be competitive it would suffer a $.19 out-of-pocket loss while ITT would receive a $.19 windfall. As ITT's own example shows, when corrected to apply the floor accurately, the floor is far from being unfair.

36. The effect of the formula without the floor would be much worse for interconnecting carriers than the pre-RCCA arrangements for interconnection made available by the IRCs. Before implementation of the RCCA, the originating carrier received a discount of 12 cents from ITT's end-to-end rate. Since the originating carrier provided the domestic haul to its customer in gateway cities it did not have to pay anything to another domestic carrier. It could match ITT's end-to-end rate and provide the domestic service with the additional 12 cents, though this might not necessarily cover its full costs. Under the RCCA, the originating carrier must ordinarily interconnect with all other domestic carriers on the same terms as with its own domestic component. It cannot keep the domestic haul for itself and must therefore incur an actual out-of-pocket expense on the domestic portion every time it transmits a message from an interconnected domestic carrier. This is likely to be a large part of a carrier's traffic. Even in cases where the carrier handles the domestic haul itself or lacks a substantial market share and need not interconnect on equal terms with other carriers, the carrier would incur all the costs of any other domestic carrier for the domestic portion but would be forced to accept much less than carriers such as ITT for the same call. Carriers who offered only international service would of course be wholly unable to recover any of this loss since they would have no domestic revenue at all.

37. Moreover, the application of the IRC's proposed formula could have meant that in some cases the domestic carrier would receive less if a customer chose it to handle the international segment than if the customer chose another carrier. In the case of Japan, for example, the domestic carrier would be assured of receiving its full domestic rate of $.40 from the international carrier unless the domestic carrier was also chosen to provide the international segment. In that case the domestic carrier would receive only $.21. This anomaly, that a carrier must suffer a loss of revenue if it is successful over its competition in obtaining overseas business, plainly discourages the domestic carrier from serving this international route, and would penalize it if it did. It also would frustrate the statute's goal of fostering open entry and would specifically defeat the RCCA's mandated separation of domestic from international services.

38. The formula, even with the floor thus seems to us quite fair to the IRCS, which is natural enough since it is basically the formula they themselves proposed. As Graphnet points out, it is far more favorable to them, for example, than the usual international transiting agreements the IRCs have entered into voluntarily. See para. 49 *infra*. For all the reasons mentioned, we believe that the floor is a minimal and necessary adjustment to the base formula.

39. Even if the IRCs did lose money on some routes as a result of the formula, as they claim but do not demonstrate, this does not necessarily mean the formula is unlawful. The applicable legal test for the adequacy of rates is not whether the carrier will earn a fair return on each and every international route, in both directions, but whether it earns a fair return overall.[14] The IRCs do not claim that they will fail to earn a fair return overall. Moreover, since the formula is based on the IRCs own rates, where they are providing transiting they remain free to alter the revenues they receive by filing to increase their customer rates.[15] They are also free to renegotiate their divisions with foreign administrations.

40. WUI argues that the outbound transiting formula is unfair and unnecessary. It is unfair, WUI claims, because it does not promote the obtaining of foreign operating agreements but only allocates more revenue to the originating carrier than the current practice of allowing originating carriers a 12 cent retention of the total end-to-end rate. It is unnecessary because the originating carrier can now interconnect its domestic network with international carriers to deliver international calls, and retain the full domestic rate. WUI claims that the Commission has no evidence that the 12 cent retention should be increased.

41. This argument misses the point of what the RCCA seeks to accomplish. The RCCA requires that domestic and international operations generally be treated as separate for purposes of interconnection. Thus, domestic carriers receive a specific rate for interconnected calls. The 12 cent retention was for the

[13] In the *Interim Order* at 962–63 we used a domestic rate of $.2954 a minute in this example. That figure did not reflect the 1.3 holding time factor. Domestic rates have also been increased.

[14] *See, e.g.*, New England Divisions Case, 261 U.S. 184, 201–03 (1923), *Federal Power Commission* v. *Hope Natural Gas*, 320 U.S. 591, 602 (1944).

[15] There is no need to increase customer rates simply because of the floor, however. If those rates are inadequate to meet the IRCs' costs, the fault is not in floor. The IRCs receive precisely the same share per call with the floor as they receive when they are themselves the originating carriers and the formula is inapplicable.

total end-to-end call and in effect meant that the carrier requiring transiting received only 12 cents for the total haul since it matched the other IRC's rates. As WUI recognizes, the RCCA does not permit unfavorable terms of interconnection of this sort. But the RCCA also requires that the IRCs provide transiting for the purely international portion of the call, to allow new carriers to enter and to eliminate the effect of operating agreements as barriers to competitive entry. The function of the outbound transiting formula is to establish fair charges which accomplish these purposes. The present 12 cent retention clearly defeats this purpose, as would accepting the argument that domestic carriers can simply hand off traffic to other carriers. The RCCA requires more than this of the IRCs—it requires that they interconnect to provide transiting to any carrier seeking to provide international service during the three year transition period, not simply that they interconnect with domestic carriers. The transiting formula is necessary to accomplish this purpose and does so, we believe, at a fair rate.

42. WUI also argues that the effort to impose a revenue division formula is in violation of the due process protections of the Fifth Amendment to the Constitution of the United States, which it says are embodied in Sections 204 and 205 of the Communications Act, 47 U.S.C. 204, 205. It characterizes the outbound formula as an arbitrary decision to protect the revenue of the originating carrier at the expense of a fair return by the transiting carrier, without the support of an articulated rationale and in violation of the requirements of Sections 204 and 205. ITT also implies that the Commission is requiring it to provide service at a rate which will not allow it to recover its costs, and that the Commission is bound to conduct a hearing under Section 201 of the Communications Act, 47 U.S.C. 201, to determine the transiting carrier's costs before it can prescribe a compensation scheme.

43. We see no constitutional infirmity as a matter of procedural or substantive due process. Procedurally, due process requires notice and an opportunity to be heard. All interested persons have been afforded both. We gave notice of our interest to prescribe a formula in the *NPRM* and the IRCs took full advantage of that opportunity. They have also filed comments with their tariff filings and in this proceeding. This procedural scheme was mandated by Congress in the RCCA to meet the special circumstances of record carrier interconnection. We fail to see how the procedure under the RCCA could be constitutionally suspect even if it differed from the procedures under other sections of the Communications Act, as the IRCs argue. Indeed Sections 204 and 205, cited by WUI, have no relevance at all. This formula involves division of revenues between interconnected carrier. Sections 204 and 205 concern review of carrier filings and practices and in any event require only "a full opportunity for hearing", which can be a notice and comment hearing. Section 201(a) governs carrier interconnection and revenue divisions. That section also requires, procedurally, only an opportunity for hearing which the IRCs have received, as our orders in this docket demonstrate.

44. We are also confident that the formula is not confiscatory and does not require the IRCs to provide service at a rate below costs, in violation of substantive due process. As we have pointed out above, the formula only divides rates in a manner largely similar to that proposed by the IRCs themselves, and is based on the IRCs own rates. The IRCs remain free to increase their transiting and overall revenues by increasing their rates. As we have also explained, the effect of applying the floor, the IRCs' major objection, is only to limit the IRCs to the same revenues they receive from their own customers under their own voluntary rates. Such rates can hardly be considered governmental confiscation.

45. Ironically, ITT seems to urge that we undertake a full investigation of IRC transiting costs before prescribing any formula. Yet, ITT has vigorously opposed the Commission's efforts to determine ITT's own costs.[16] The IRCs generally do not keep the detailed books or records which would be necessary to prescribe, with any degree of confidence, cost based rates for specific services. The proceeding required to develop this information could probably not be completed within the three year expiration period which Congress has established for the prescription of rates under Section 222(c) of the RCCA. Congress directed that interconnection was to be based so far as possible on costs, but that a division of revenues formula be implemented within 90 days at all events if the carriers themselves could not agree. The IRCs have provided no data on costs, either in response to the *NPRM* or in this proceeding, which would indicate that the formula would cause them to suffer a loss on any route or in any direction, except to the extent that they choose to accept losses under their own tariffs. Manifestly, they have not shown that the formula is confiscatory under the constitutional test that the carrier may not be deprived of a fair overall return.

46. We thus do not perceive that the formula with the floor could operate unfairly toward the IRCs. But in any event the formula is interim in nature. If the IRCs can demonstrate unfairness in fact we can modify it. Finally, each IRC has another remedy. If it believes that the formula is unfair to transiting carriers, it can operate instead as an originating carrier. Thus, if an IRC believes that it would receive an inadequate division as a transiting carrier, it can cease to provide service over its own facilities to a particular point, or even generally, and use the facilities of the remaining carriers who would continue to provide transiting service. These carriers would presumably charge, and, if necessary, raise rates to a level sufficient to cover the cost of providing such transiting service. Accordingly, under the reserve settlement that we have prescribed, the transiting IRC with its own international facilities and operating agreements with foreign countries can be no worse off than the carriers without such specific operating authority. If an IRC perceives that the carriers without operating authority are receiving undue benefits, it can place itself in the same position and use the transiting facilities of other carriers.

47. TRT also points out that the RCA proposal contemplated that the IRCs would retain all inbound traffic, while the Commission applied the formula to inbound traffic under the pro rata requirement. However, this does not make the formula unreasonable. The IRCs may be less well off because the benefits they obtain from outbound traffic are reduced during the transition period. But this was Congress' intent in implementing the pro rata requirements, as we discuss in the next section. We point out again that whatever the division of revenues between the carriers, the IRCs remain free as usual to adjust their customer rates to achieve an adequate return, or to seek transiting arrangements themselves.

48. We recognize that the interim formula is not based on specific evidence as to cost of service. It was obviously not possible to develop the data required to set such rates in the brief period available to us to meet the Congressional deadlines. The House Report clearly expresses the Congressional intent:

[16] See ITT World Communications Inc., CC Docket No. 80-633, 86 FCC 2d 701 (1981).

> In the event that the carriers are unable to negotiate an agreement for the division of revenues within the timetable established by the bill, the FCC is empowered to prescribe a division rate that, to the extent possible, is cost based. The Committee's overriding concern, however, is that such prescription takes place within the timeframe established by the bill.

By accepting the IRCs' proposed formula, with what we believe are necessary modifications, we hoped to implement the mandate of the RCCA in a practical fashion. The IRCs make no showing that the formulas modified fails at this purpose.

49. Graphnet proposes an alternative formula which it says approximates presently established worldwide transiting arrangements. Graphnet claims the generally accepted practice for international transiting is that the originating carrier pays the transiting carrier ⅗ of the established accounting rate. The transiting carrier would then retain ⅛ of the accounting rate and pay ⅛ to the foreign administration. The originating carrier would retain ⅛ of the accounting rate. The effect of this proposal would be to increase the amount retained by the originating carrier at the expense of the transiting carrier. The other IRCs oppose this proposal as overly generous, but do not appear to dispute Graphnet's contention that it represents generally accepted international practice. In our view, Graphnet's proposal is not objectionable as a matter of principle. It could be reasonable to adopt an industry practice particularly as an interim measure. However, it is unclear what the actual effect of Graphnet's proposal would be. As is the case with other aspects of our *Interim Order*, we are not disposed to modify what seems a workable, interim approach in the absence of clear evidence that another approach is superior. For example, we are not entirely certain (despite the IRCs' silence on this point) what the established international practice is, whether the practice is consistently applied, whether such practice represents anything more than the raw bargaining power of the parties involved, or whether the practice is somehow related to costs. In any further proceeding to consider the outbound interconnection formula Graphnet may present evidence that its proposal is more sutiable than our own. Since the interim prescribed formula seems to us to strike an equitable balance and since, notwithstanding their objections, it tracks the IRCs' own proposals, we deny the petitions to reconsider it at this time.

3. *Pro Rata Return Flow Provisions*

50. Section 222(c)(1)(A)(ii) of the RCCA provides that interconnection agreements for international record carriers service

> Shall require that the allocation of record communications service between points outside the United States and points of entry in the United States shall be based upon a pro rata share of record communications service between points of exit out of the United States and points outside the United States provided by the carrier making such request for interconnection.

There is one exception. The requirement does not apply

> in any case in which the customer requesting any record communications service between a point outside the United States and a point of entry in the United States has the option to specify the international record carrier which will provide such record communications service.

51. In applying this provision in the *Interim Order*, the Commission traced the Congressional intent to allow open entry and full competition in international markets. The pro rata requirement is intended to reduce the inhibiting effect on competition of restrictive practices of foreign administrations, notably the refusal to negotiate operating agreements. The Commission noted that the means of implementating this intent are less than clear (for example, because network operations are based on delivery of inbound traffic by the foreign administrations at mid-ocean), but rejected IRC arguments that its implementation be delayed or ignored. The Commission also rejected the notion that Congress intended to require the actual physical distribution of traffic at midocean so that it could be divided among the different IRCs in proportion to their outbound traffic. Rather, the Commission concluded that it could

> best accomplish the intent of Congress here by dividing the economic benefit that carriers are entitled to receive for inbound international traffic, so that a carrier, which would otherwise be foreclosed from actually handling inbound international traffic due to the lack of a foreign agreement, may participate in the economic benefits associated with the carriage of such traffic. 89 FCC 2d at 965.

52. We prescribed that carriers who are unable to obtain foreign operating agreements be allowed to receive a pro rata share of the economic benefits of inbound traffic for all record communications service, and concluded that the allocation of revenues should follow the transiting arrangements prescribed for outbound traffic. We also allowed the transiting carrier to elect to effectuate physical delivery to be called party when this would avoid involving an extra U.S. carrier and an additional U.S. switch in the transmission. In these cases, the carrier entitled to the pro rata traffic would receive the same allocation as that prescribed for outbound traffic. We emphasized "that our revenue allocation prescription is interim in nature and one which must necessarily change as circumstances warrant." 89 FCC 2d at 967.

53. The IRCs repeat essentially the same arguments on reconsideration which they raised in their comments to the *NPRM*. ITT argues that the statutory language is so vague as to be a legal nullity, and that the Commission should therefore ignore it. TRT argues that the formula is not authorized by the RCCA because it is a revenue allocation formula and the RCCA provides for a traffic allocation formula. As we said in the *Interim Order*, we believe it is incumbent upon us to discern the intent of Congress with respect to the pro rata provision and to apply the provision in a manner consistent with the overall purposes of its statute. As the legislative history makes clear, that purpose is to facilitate entry into these markets by counteracting the competitive disadvantage that some carriers face because they are unable to obtain operating agreements with foreign administrations. This purpose, we believe, can be reasonably accomplished by a revenue allocation formula. Since it is physically impossible to actually make a distribution of traffic at mid-ocean, we do not read this statute as requiring that this be done.

54. The IRCs argue that the return flow provision of our formula is not consistent with the statutory intent and is unfair. Some IRCs contend that Congress intended the pro rata provision to apply only in instances where a U.S. IRC actually obtains a benefit in the form of increased inbound traffic from the overseas administrations. ITT argues, for example, that the formula should apply only to increased inbound traffic which is a direct and measurable result of increased outbound traffic provided by the carrier claiming a pro rata benefit; it claims that under this standard a relatively small percentage of overseas points would even be eligible for pro rata treatment. RCA argues similarly that traffic which an IRC handles on a transit basis for foreign administrations should be excluded from the allocation because this traffic is based on negotiated agreements independent of U.S. outbound traffic. RCA argues that

since the IRC receive no benefit from foreign administrations for this traffic, the traffic should be excluded from the pro rata allocations. WUI says that overseas administrations route inbound traffic in many cases without regard to the IRC's outbound traffic such as a "carrier-of-the-month" arrangement, or a system based on the number of assigned trunks rather than the calls. Moreover, WUI argues that there is always a time lag between increased outbound traffic and the realization of increased inbound return, and suggests that the acquisitions of additional operating agreements by Western Union will dry up any pool of unrouted inbound traffic. WUI submits that the interim inbound formula should apply only when the transit carrier actually receives inbound traffic in excess of the share it would have received as the result of outbound traffic initiated by another carrier.

55. We cannot agree with the contention that Congress intended the pro rata provisions to apply only when the transiting carrier received a benefit from the foreign administration as a result of the outbound traffic received from the originating carrier. The pro rata provision of Section 222 contains no such restriction. By its terms, it applies to all inbound traffic unless the foreign administration allows the customer the option to specify the international record carrier which will provide the service. The IRCs seek to have the Commission add an additional restriction to the statute based on the House Report, which states that the carrier without an operating agreement should receive the benefit of any increased inbound allocation. However, it appears to us that the House Report cites the case where the transiting IRC receives the benefit of increased return traffic as an example of the need for the pro rata provision, not as a limitation on its operation. If Congress had intended the staute to be limited in its effect to countries which allocate traffic in proportion to traffic received it would presumably have said so, by adding a further restriction or exception. It appears to us that Corgress intended the transitional, 3 year operation of the pro rata provisions to assure a full opportunity to new, small carriers to gain a foothold in the international record communications market, despite the difficulty in obtaining operating agreements.[17] We have applied the pro rata provision to give effect to this intent.

56. More fundamentally, the calculation of pro rata shares based on benefits to the transiting IRC is administratively unreasonable, indeed impossible. The IRCs concede as much. ITT states that

> 30 of the countries with which we have direct operating agreements permit subscriber choice of the U.S. record carrier by which the traffic should be routed. This category of traffic is specifically excluded from the *pro rata* return provisions by Section 222(c)(1)(A)(ii)–(II) of the Record Carrier Competition Act. In another 61 countries, the Administration allocates traffic among the U.S. IRCs on bases generally known only to the administration; it can, however, reasonably be concluded that such allocations are based on a number of factors other than (or possibly in addition to) the traffic received from the U.S. IRCs, particularly as regards any short term changes in such traffic. Thus, for this group of countries, even if a significant increase in a given IRC's outbound traffic (resulting from traffic routed via that IRC by another U.S. international carrier) were to produce, over the long term, some increase in that IRC's traffic allocation by a given country, it is impossible to measure the specific "benefit" of this increased outbound traffic or to isolate that traffic from other factors which may have influenced the administrations decision. Finally, only 15 countries allocate traffic among the U.S. IRCs in proportion to the amount of traffic which they receive from each of the IRCs.

ITT states that even in the 15 countries which allow proportionate returns there would be substantial administrative problems in applying the pro rata provision based on the benefits theory. At least three different methods are used for determining traffic quotas, and the administrations provide no information on whether the traffic handed off is derived from the quota system or allocated on some other basis. TRT frankly admits that it does not see how a pro rata system based on benefits to the IRCs from outbound traffic could be implemented. It suggests we seek further comments.

57. The pro rata provision applies to all international routes where the overseas customer cannot select the international record carrier to handle the inbound haul. We cannot assume that Congress intended that this broad language be narrowed to a virtual nullity, totally ignored, applied in an unworkable fashion, or delayed indefinitely. These are the options the IRC admit are inevitable under their benefit theory. Moreover, we believe it likely that the carriers do generally derive benefits from outbound traffic even if they are often inchoate. On some routes, the IRCs obtain virtually all of their revenue from the inbound traffic. Japan is one instance. The IRCs necessarily depend upon receiving a fair share of the inbound traffic to make a profit on that route. On this route as on others, the IRCs are very likely to receive more inbound traffic and other favorable treatment from the foreign adminstrations if they deliver more traffic, even if there is some time lag before this happens, or there is not a direct correlation, or those advantages are difficult to quantify.

58. RCA states that it has no present dispute with the way the Commission has applied the pro rata provisions, but it seeks clarification on the traffic subject to the formula. First, it argues that three types of transit traffic should be excluded from the inbound traffic subject to pro rata: 1) traffic originating in one country and handed off to the IRC by a second country for termination in the United States (e.g., a call from Nigeria, via the U.K., handed off to an IRC for delivery to the U.S.); 2) traffic originated in one country and delivered to a U.S. IRC on a transit basis for termination in a third country (e.g., a call from the U.K. handed off to an IRC for delivery to Japan); and 3) traffic where two carriers provide transiting (e.g., call from Nigeria, routed via the U.K. and the U.S. to Japan, where a British and a U.S. IRC both provide transiting).

59. We agree with RCA that traffic in cases 2 and 3 which does not terminate in the U.S. should not be subject to the pro rata requirement. Pro rata is to apply to traffic "between points outside the United States and points of entry in the United States." Section 222(c)(1)(A)(ii)(1). Traffic which happens to be physically transmitted through the U.S. to a third country should not be included, for it is not traffic terminating in the U.S. However, upon the same reasoning, traffic which an IRC receives from a foreign administration for delivery in the U.S. is governed by the pro rata provisions even if the traffic originated in another country. Thus, in RCA's case number 1, the traffic should be included in the pro rata allocation. Moreover, since we have directed that the pro rata allocation be determined on a service-by-service, route-by-route basis, the traffic should be included in

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[17] *See, e.g.*, Cong. Rec., H8906 (daily ed. Dec. 8, 1981) (remarks of Rep. Markey): We have crafted legislation which provides for a group for which there is no powerful or well-financed lobby—new entrants into the record carrier industry. In this regard, this bill takes a tremendous step beyond just squaring off the vested interests of a cartel against a monopoly.

We have applied the spurs of competition to a technology which, until now, has fallen victim to monopoly complacency. My hope is that providers of record carrier service and new entrants into this industry will seek to advance this technology and will aggressively and creatively foster the development of new markets.

the file for the actual originating country. For the case mentioned, for example, the Nigeria-U.S. call or its revenues would be allocated in pro rata proportion to outbound U.S.-Nigeria traffic handed off to RCA by the originating IRC.

60. We recognize, on this point, that the IRCs have in the past claimed that they do no know where a call originates. For example, the IRCs have represented that they would not know whether a call handed off to them by the British administration actually originates in the U.K. or in another country. In general, we believe the IRC will in fact know where a call has originated because of its operational and contractual arrangements with the foreign administration. If the IRC actually does not know, however, the call should be allocated as though it originated at the first foreign point the IRC knows that it passed. Thus, to use the example above, if RCA does not know the call originated in Nigeria, the call should be allocated as though it originated in the U.K.

61. RCA also argues that traffic addressed to the domestic network of the IRC which provides the inbound haul should be excluded from pro rata allocations. It notes the foreign administrations automatically route to each IRC the traffic directed to its domestic network. Only traffic to Western Union's network has in the past been allocated. RCA contends that this practice means that when a foreign customer calls the number of an IRC's domestic customer, the option to specify the U.S. carrier is being effectively exercised. Therefore, it urges, the call is subject to the exception to pro rata contained in Section 222(c)(1)(A)(ii)(II).

62. RCA's argument amounts to a claim that a foreign customer "chooses" an IRC when the foreign administration routes traffic to that IRC in a consistent manner even though the customer knows nothing about it and has no actual option. Unless the U.S. addressee has telex machines connected to more than one U.S. carrier's network the foreign customer has only a Hobson's choice—if he wants to make the call he must accept the fact that the international portion will be handled by the international operation of the carrier providing the domestic portion. This was not the choice Congress had in mind. We concluded in the *Rejection Order* that the pro rata provision applies except where the foreign administration allows its subscribers to select *any* U.S. international carrier, including those without operating agreements. In the case RCA presents, the foreign customer's choices would be slim or none. Moreover, RCA implies that the pro rata allocation can be based solely on traffic directed to Western Union customers. Of course, Western Union is also now an IRC and unless the entire burden of pro rata is to be placed entirely on its international operations—a result totally at odds with the RCCA's goal of eliminating barriers to entry and flatly discriminatory—the RCA proposal would again render the pro rata provisions practically meaningless. We find no reason to reconsider our implementation of pro rata.

63. The objections of the IRCs to the inbound revenue allocation formula are essentially identical to their objections to the outbound formula, because, of course, the formula itself is identical. We need not repeat our discussion of this point. We would note, however, that using the same formula for traffic in both directions would not only appear to be logical from a cost standpoint, but might also prevent inequitable manipulation of settlement agreements. If different allocation formulas were used for outbound and inbound traffic, the carriers with operating agreements might be able to renegotiate the terms of foreign agreements to take advantage of the disparity for their own benefit and that of the foreign administration, but to the detriment of the carriers requesting transiting. For example, if the 50–50 split were replaced by a 25–75% split for outbound transiting and a 75–25% split for inbound pro rata, the transiting IRC would have a strong incentive to renegotiate its operating agreements so that it retained all or most of the outbound revenue, while the foreign administration retained a corresponding share of the inbound revenue. Assuming 40 cents per minute is the revenue to be divided between the originating and transiting IRCs, and this is the same for traffic in both directions, each carrier would receive 40 cents in the case of either a 50–50 or 25–75 split. But if the transiting IRC renegotiated the operating agreement with the foreign administration to switch to sender-keep-all arrangement, it would receive 80 cents for outbound calls and nothing for inbound. Under the 25–75% split, the originating IRC would receive only 20 cents altogether and the transiting IRC 60 cents, though there is no difference in cost. Congress sought to eliminate this sort of discrimination and the barrier to entry it represents.

4. 15% Discount for Carrier-Carrier Interconnection

64. The RCCA provides that "To the extent possible . . . the Commission shall require that [the] equitable allocation of revenues [in the interconnection agreement] be based upon the costs of the record communications service or facility employed as a result of such agreement." Sec. 222(c)(2). In the *NPRM*, the Commission noted that there was no creditable evidence of significant cost differences between the services Western Union provided to customers and those it provided to the IRCs. We also recognized that this issue was the subject of an evidentiary hearing in Docket No. 78–97. We invited parties to provide cost data and stated that in the absence of such data we could not conclude that an interim discount from the customer rate was justified. Shortly thereafter, the Administration Law Judge released on initial decision in Docket No. 87–97. The ALJ determined, *inter alia*, that there are cost savings on the order of 20 to 25 percent in providing service to the IRCs as compared with domestic subscribers, because domestic and international Telex/TWX services are provided differently.

65. In the *Interim Order* we noted that the issue of prescribing an interim discount presents a difficult problem because no final resolution of this matter has been made in Docket No. 78–97. Nevertheless, we recognized that the ALJ did find that a substantial discount was warranted and that the House Report disclosed a legislative intent that some discount should be part of a carrier-to-carrier interconnection arrangement. Accordingly, we prescribed an interim discount of 15%, while emphasizing that this decision in no way prejudges any action the Commission might take in Docket 78–97. The discount applies to 1) terminating interconnected domestic calls; 2) initiating and handling off to a second U.S. carrier international outbound calls; and 3) accepting for delivery from another U.S. carrier international inbound calls.

66. TRT and Graphnet are the only parties seeking reconsideration of the interim 15 percent discount.[18] TRT claims that cost data in the record indicates that a discount of up to 50 percent would be appropriate and that other cost studies showed that a minimum of 20 percent was required. Graphnet similarly argues for a 50/50 split for domestic interconnected traffic or at least a 20 percent discount. Graphnet's petition is largely addressed to the difficulties faced by a new carrier attempting to enter the domestic telex

[18] Western Union also requests that the Commission rule that refunds will be ordered if the interim discount is modified. Since the issue of refunds, if any, will be decided in Docket No. 78–97, we do not address the issue here.

market. It argues that a higher discount is needed to allow new carriers to compete profitably.

67. We find no basis in either TRT or Graphnet's petitions for modifying the interim discount at present. The other carriers have not challenged the reasonableness of the discount and TRT presents no new arguments or information. Graphnet's arguments largely amount to a request for favored treatment to new domestic carriers in order to reduce their costs and rates. The directive of the RCCA, however, is to require interconnection based so far as possible on costs. This should ensure a fair opportunity for new carriers to compete, certainly an opportunity equal to that of a company seeking to enter a typical competitive market. Any modifications of the interim discount should be to align it more closely with costs, not to favor certain carriers regardless of costs. In the absence of any demonstration that some other discount better reflects costs, or of a final determination of that issue of Docket 78-97, we will not disturb the present interim discount.

68. TRT and RCA also raise a related issue. They argue that the Commission should permit carriers voluntarily to implement, on a mutual basis, domestic division arrangements under which the payout to the terminating carrier is less than that prescribed by the Commission. They argue that Western Union will not provide rates and terms of interconnection which open up its near-monopoly network to interconnected traffic, and that if other carriers are allowed to interconnect with one another on more favorable, mutual terms, they will be able to provide a meaningful alternative to Western Union's network. In particular, they may be able to offer increased incentives for customers to join their networks rather than Western Union's. TRT and RCA also contend that there is no basis in the record to prohibit carriers other than Western Union from voluntarily accepting a lower terminating charge than that prescribed. The IRCs and Graphnet had entered into agreements to terminate domestic interconnected traffic at the rate of 10 cents per minute and RCA by letter of April 9, 1982 requested a clarification of whether such bilateral agreements were allowed under the *Interim Order*. The Chief, Common Carrier Bureau, by letter of April 27, responded that he interpreted the 15 percent discount as applying to all interconnected carriers. He noted that no IRC had provided costs and stated "For the time being, therefore, until the Commission has the opportunity to consider this matter further, carriers' interconnection tariffs should reflect the 15 percent discount notwithstanding any pre-existing bilateral agreements." The Commission also rejected such provisions in the *Rejection Order*.

69. Western Union opposes reconsideration of this issue. It points out that the IRCs have still not provided cost data, and argues that they have not shown they will be better off, noting that under a mutual agreement carriers will receive the same net revenue as under the 15 percent discount so long as a carrier's originating and terminating traffic are about equal. Western Union also reasons that if a carrier can show that a 10 cent charge is cost-based, the carrier should offer it to all carriers, not only to those carriers willing to agree to a reciprocal arrangement.

70. The basic choice presented us on this issue is between two policies of the RCCA which are in some tension. On the one hand, the RCCA requires that interconnection be based so far as possible on costs. The bilateral 10 cent arrangements are not based or claimed to be based on the costs of terminating calls. On the other hand, the RCCA seeks to promote competition, minimal regulation, and open entry. The IRCs apparently believe that they can compete more effectively with lower, bilateral domestic interconnection rates, and that entry into the market long dominated by Western Union would be facilitated. Elimination of this restriction would also reduce our regulatory role. Moreover, to the extent that the IRCs lack market power in domestic telex, it can be argued that they should be allowed to discriminate.

71. Weighing these opposing factors, it appears reasonable as a policy matter to allow bilateral arrangements of the sort proposed by the IRCs, so long as the same terms are offered to all carriers seeking interconnection. This course should foster competition and reduced regulation, yet should not substantially depart from the goal of cost-based interconnection. So long as traffic flows between carriers are relatively even in both directions, the overall revenue effect of the bilateral agreement would be the same as the 15 percent discount, as Western Union itself points out. Although use of the 15 percent discount was a reasonable first step to establish functional interconnection, and to prevent abuse by Western Union of its dominant domestic position, we perceive no convincing policy reasons why a carrier may not now voluntarily accept less for interconnection as part of a bilateral agreement, where the overall effect of the agreement, assuming relatively even traffic flows, is as close to costs as the 15 percent discount. Of course, it is somewhat anamalous for a carrier to make the offering of a tariffed service contingent upon the offering of a similar service by the carrier-customer. But in this case, with its unique problems of carrier-to-carrier interconnection, the practice seems justifiable. However, the IRCs' proposal also presents troubling practical issues. It would, for example, require the IRCs to impose different terminating charges for calls received from different carriers, about 30 cents for some and 10 cents for others. Moreover, since the bilateral rate applies only to domestic calls, terminating carriers would apparently charge 30 cents for terminating all international calls, including those from carriers who are charged the 10 cents rate for domestic calls. The carrier would thus have to know whether a call was domestic or international to determine what the charge should be. In the past, the IRCs have represented to the Commission that they are unable to determine where a telex call originates. To the extent that this is so, we are uncertain how the IRCs would determine the proper termination charge for each call. Accordingly, if the IRCs wish to implement the bilateral 10 cent termination arrangement in their interconnection tariffs, they should provide a full explanation of how the arrangement would be implemented as part of a request for waiver of the interim discount. We will grant the Chief of the Common Carrier Bureau discretion to determine whether the carrier has demonstrated that the 10 cent arrangement can be implemented in a practical manner and, in such case, to allow appropriate waiver of the terms prescribed in our *Interim* and *Rejection Orders*. If the waiver is granted, the record carrier may then file a transmittal proposing corresponding revisions to its interconnection tariff. The revised tariff should expressly include both the 15 percent discount, without condition, and the offer to terminate domestic traffic at a lower rate, subject to reciprocal arrangement, as service options available to all record carriers. It should also list the carriers interconnecting under the reciprocal offering.

72. One important caveat should be noted. The RCCA allowed the carriers 90 days to reach voluntary interconnection agreements. They failed to do so. This Commission was then required to prescribe interconnection terms to be effective during the three year transition period. Our prescription of interconnection arrangements is the

exclusive interconnection mechanism allowed by the RCCA. Carrier arrangements other than those prescribed are not permitted and are of no effect under this plan. Carriers seeking modification of current interconnection requirements must request a modification of our prescriptions in the *Interim Order* and the *Rejection Order*. Thus, carriers may not implement lower, bilateral charges or other modifications of the prescriptions until and unless the Commission specifically allows it.

6. *Market Share and Reports*

73. The RCCA exempts record carriers which "[do]" not have a significant share of the market for record communications services" from requirements that their domestic and international operations be treated as separate carriers for purposes of interconnection, and that such interconnection be offered to other carriers equal in type and quality and upon the same rates, terms and conditions as to the separated carrier. Section 222(c)(1)(B). In the *Interim Order* we concluded that this exception applied to FTC and noted that there seemed to be no question among the parties that it also applied to Graphnet. We therefore did not require Graphnet to separate its domestic and international segments, but invited further comments on this determination. 89 FCC 2d at 956.

74. Graphnet provided no information on its market share or the extent of its operations and indeed did not comment at all on this issue. TRT and ITT contend that there is insufficient publicly available information to make a conclusive determination of Graphnet's market share. TRT suggests that on the basis of what is known, such as the number of listed Graphnet subscribers, it would appear that Graphnet has a greater market share than FTC, and perhaps greater than TRT's own. TRT, ITT, and Western Union urge that carriers such as Graphnet, which currently do not file financial, service, and traffic reports under the Commission's Rules, should now be required to do so in order to determine their relevant market shares. WUI also claims that such filings should be made affirmatively to demonstrate that the carrier is eligible for interconnection as a record carrier within the meaning of revised Section 222. In addition, it urges that such carriers should provide this information to establish their *bona fides*, i.e., to provide the public and carriers who may be required to interconnect with information about the financial backing and health of new carriers and their financial, technical, and legal qualifications. It notes that it was forced to write off obligations from another resale carrier which recently went bankrupt. CCI states that it is not required to file reports under its special permission, but will file required reports when it receives permanent operating authority. It also says that it has been reluctant to submit such information voluntarily because it claims the IRCs could use this information for what CCI describes as unrestrained, predatory conduct aimed at driving it out of business. But it states that it is prepared to make such filings if the Commission deems it necessary.

75. As the IRCs point out, the RCCA requires us to differentiate the regulation of record carriers according to their market shares. Applying the RCCA's definition of a record carrier also may require revenue information.[19] To implement these provisions, information on a carrier's operations will inevitably be necessary, especially market share data. However, we are not convinced that implementation of the RCCA requires the effective expansion of filing requirements beyond those presently required by our rules and others. The IRCs suggest that it is possible Graphnet could be considered to have a significant market share; but they don't even raise the possibility that any other carriers would be found to have market shares approaching those of the four major IRCs or Western Union, the carriers apparently designated as having significant market shares by Congress. It is also unlikely that any information we might receive from carriers on the share of their revenues derived from record communications services would be of actual value. The interconnection and other requirements of the RCCA are largely supplements to the Commission's existing authority to regulate carrier interconnection. It is doubtful that the Commission would impose different requirements on certain small carriers who provide record service, but are not technically record carriers in the sense of deriving a majority of their revenues from such services. Thus, the market share data could well be unnecessary as a practical matter.

76. We have also been reluctant to require the filing of Commission reports by new small carriers because of the burdens such reports would impose, the possible adverse effects of such requirements on their ability to compete vigorously, and the fact that there seemed no substantial public need for such information. The RCCA directs us to forbear from unnecessary regulation and promote competition "to the maximum extent feasible." Section 222(b)(1). Imposing additional and largely unnecessary information requirements on small carriers would disserve this clear policy directive.[20] We believe that the few instances in which such information may prove necessary can be dealt with on a case-by-case basis.

77. We also find no merit in WUI's proposal that the filing requirements be extended to additional small carriers in order to demonstrate the carriers' *bona fides*. Our information requirements are imposed for public purposes, to provide the Commission with data necessary to carry out the goals of the Communications Act. We do not collect data to suit the private interest of particular carriers or to enable them to make better business decisions. This is particularly the case where the data might be used for competitive purposes.

78. For these reasons, we deny the request that we impose new filing requirements on all carriers offering record services. However, we do believe that further information is required in the case of Graphnet. Although, we specifically requested comments on the issue of Graphnet's market share in the *Interim Order*, Graphnet itself ignored this request completely. It is likely that a brief filing by Graphnet could have resolved this question. We will therefore direct Graphnet to provide a full record from which the issue can be decided. Graphnet is ordered to file the Commission's Form O Annual Report, as provided in Section 43.21 of the Commission's Rules, and the semi-annual report of overseas telecommunications traffic under Section 43.61, no later than March 31, 1983 and May 15, 1983 respectively. It is also required to make an affirmative declaration of its status as a record carrier under Section 222(a)(2) of the RCCA and, if exemption is claimed under Section 222(c)(1)(B), of its shares in the domestic and international markets. This declaration should be based on identified sources derived from the filed reports or other reports

[19] Under Section 222(a)(2) the definition of a record carrier "does not include any common carrier which derives a majority of its revenues during any calendar year from the provision of services other than record communications services." The legislative history indicates that this was intended to exclude such companies as AT&T and Comsat. House Report at 10.

[20] None of the petitions suggest that any of the small record carriers are presently required to file reports and are violating our Rules by failing to do so. Our discussion is thus limited to the question of whether we should impose additional filing requirements to implement the RCCA.

submitted by Graphnet. In general, the filing should contain all the information upon which Graphnet seeks to rely. Other record carriers may not deny interconnection because of the failure of Graphnet or any other carrier to file reports, or of any defects therein, unless the Commission has so ordered.

7. Contracts

79. The RCCA provides a comprehensive scheme for regulation of record carrier interconnection, but it also "grandfathers" certain intercarrier contracts. Section 4 of the Act provides that "The amendment made in Section 2 [adopting new Section 222] shall not affect the validity of the terms of any otherwise lawful contract relating to the distribution of outbound international record traffic between any domestic record carrier and any international record carrier if such contract was entered into before June 23, 1981." The House Report indicates that this provision is intended to permit enforcement of contracts by which Western Union agreed to distribute international traffic to certain international carriers such as TRT, if the contracts are "otherwise lawful". House Report at 7, 14. TRT sought to include a contract with Western Union in its interconnection tariff, but this was rejected pending a determination based on an appropriate record [21] that the Commission should reverse or modify its earlier order filed in compliance with the mandate of the Second Circuit Court of Appeals [22] that the contract was unlawful.[23] The Common Carrier Bureau accordingly requested all carriers who had entered into contracts which they claimed were "grandfathered" by Section 4 to file them with the Commission for public comment. The comments were to address the issue of whether each contract is subject to Section 4 and is otherwise lawful within the meaning of that section. This inquiry was limited to the lawfulness of the contract under the Communications Act. The Bureau stated that issues of contract law should properly be decided by a court.[24]

80. TRT and FTC filed contracts in response to this notice. The TRT contract is a letter agreement with Western Union dated May 19, 1980, with a minor modification on July 1, 1980. TRT agrees to provide transiting facilities to Western Union, on a non-exclusive basis, for overseas telex traffic as to which Western Union assumes tariffing, billing, and collection responsibilities. Western Union agrees to route a minimum of 50 million minutes during the first five years of the agreement at a rate of $.30 per minute (or $.10 for traffic to the U.K.) plus the amounts due foreign correspondnents. The five year period was scheduled to begin August 15, 1980 (subject to modifications in the July 1, 1980 letter), but all obligations and duties under the agreement would be postponed if the agreement were prohibited or enjoined by this Commission or a court.

81. The FTC agreement, embodied by a letter of November 10, 1980, contains similar terms except that Western Union does not agree to deliver any particular amount of traffic during the five year period. Western Union agrees to transfer to FTC all traffic routed by the sender via FTC and not to discourage such routing by charging rates higher than for traffic routed via any other carrier.

82. Comments were filed by Western Union, RCA and WUI. All of the comments agree that both contracts are of the type encompassed within Section 4 of the RCCA and were entered into before the date specified. Western Union notes that it has previously defended the agreements as lawful under the Communications Act, and does not contest their current lawfulness. RCA and WUI argue that the contracts contravene express provision of the Act and thus are not "otherwise lawful." First, RCA states that the agreements provide different, lower charges for interconnected calls than the formula prescribed in the *Interim Order*, and argues that the contracts therefore violate amended Section 222. But this argument is clearly baseless. Section 4 of the RCCA states that "the amendment in Section 2 (of the RCCA) of shall not affect the validity of the terms" of such contracts. It is Section 2 of the RCCA which enacts the amended Section 222, including requirement that an allocation formula be adopted. Thus, the interim formula implementing amended Section 222 cannot affect the validity of these agreements. Section 4 allows the agreements to differ from any regulatory scheme adopted under the amended Section 222 provided the agreements are "otherwise lawful".

83. Next, WUI argues that the agreements are unjust and unreasonable in violation of Section 201(b) of the Act, and both WUI and RCA assert that they are discriminatory in violation of Section 202(a). Before considering these arguments we should first address TRT's position that Congress intended the "otherwise lawful" provision in Section 4 of the RCCA as a reference only to any remaining questions of contract law not to whether the agreements might violate other provisions of the Communications Act such as those relied on by WUI and RCA. In support TRT cites language in the House Report that issues of contract law should be decided by the courts.[25] However, the terms of Section 4 "grandfather" the contract only with respect to section 2 of the RCCA, which repealed and replaced Section 222, not with respect to any other provisions of the Communications Act. If Congress had intended to "grandfather" the contracts against all violations of other provisions of the Communications Act, it presumably would have said so and not limited the exception in Section 4 to amended Section 222.[26] Moreover, in the sentence following the language relied on by TRT, the Report states, p. 7: "This legislation should not be construed as affecting the Commission's authority under any of the other sections of the Communications Act of 1934, as amended." Thus, while Congress apparently did not perceive any objection in policy to these agreements, it also has not altered the Commission's traditional responsibility to assure that intercarrier agreements comply with other provisions of the communications Act.

84. We turn then to the issue of whether the contracts are "otherwise legal" under other provisions of the Communications Act. WUI and RCA argue that the TRT agreement is discriminatory, because Western Union has refused to offer a minimum traffic guarantee to any other carrier; that it is anti-competitive and violative of Commision policy by analogy to prohibitions on exclusive agreements between U.S. international carriers and foreign administrations; that it implements charges and practices which are not just and reasonable under Section 2101(b); that it is an illegal market division scheme in *per se*

[21] Western Union Telegraph Co., 84 FCC 2d 150 (1980).

[22] ITT World Communications v. FCC, 635 F. 2d 45 (2d Cir. 1980).

[23] This part of the *Rejection Order* was stayed pending appeal by the court of Appeals for the D.C. Circuit, TRT v. FCC, Docket No. 82-1658, decree entered October 25, 1982.

[24] The House Report states, at 14: "In the event the agreements are challenged, their legality shall be determined by the courts on well-established issues of contract law, such as the intent of the parties and the nature of the consideration."

[25] See footnote 17 supra.

[26] The House Report also states at p. 7: "The bill does not take a positition on the legality of the contract absent the restrictions in Section 222."

violation of Section 1 of the Sherman Act; and that it constitutes a denial of reasonable, and non-discriminatory access to an essential facility. First, the discrimination argument is unpersuasive. All of the IRCs have transiting arrangements established by contracts. The fact that a carrier did not make a public offering of its transiting requirements and terms before agreeing to a contract has never to our knowledge been held sufficient to render a transiting agreement unjustly or unreasonably discriminatory. Absent the requirements of amended Section 222 (which of course do not apply to these contracts), the other IRCs would also be free to compete for transiting Western Union or other carriers' traffic.

85. Next, we do not see the relevance to these contracts of our policies preventing foreign administrations from favoring selected U.S. carriers by means of exclusive agreements. These contracts are not exclusive contracts, because either party can make similar arrangements with other carriers, except as presently barred by amended Section 222. There is also not the same likelihood of harm to U.S. national interests as in the case of exlusive agreements with foreign administrations, which can be used to "whipsaw" carriers and eliminate competition. Moreover, the contracts themselves are not anticompetitive on their face. They allow Western Union easier entry into international markets and provide traffic to the small international carriers, who at the same time continue to compete with Western Union and the other IRCs.

86. Nor can we conclude that the transiting charges agreed to would be unjust and unreasonable under Section 201(b). This argument is based on the bald fact that the charges would be different than those under the interim formula. This does not establish the unreasonableness of other, different charges. We might of course seek cost justification of the charges, but it is difficult to see what public benefit would be served by trying to protect one side or the other from what might appear to us an improvident bargain. The IRCs themselves have requested that we allow them to make mutual agreements for domestic interconnection charges which are lower than the interim prescription to facilitate their competition in the domestic market. It is difficult to perceive why we should on the other hand void a voluntary contact to facilitate Western Union's entry into the international market. In the absence of any sign of abuse or harm to the public interest we see no reasons to disturb the bargain reached by the contracting carriers, and certainly no illegality.

87. Finally, we do not find that the agreement violates the Sherman Act.[27] RCA and WUI claim that each agreement is to share traffic and as such constitute a horizontal market allocation scheme in per se violation of Section 1 of the Sherman Act. They cite *U.S. v. Topco Associates*, 405 U.S. 596 (1972) as authority. However, we do not see how the agreement can be said to have this effect, and the *Topco* case is not in point.[28] Western Union, TRT, and FTC are free to compete for international traffic in all parts of the world, as they presently do in fact. There are no market areas which are reserved for or allocated to one or the other contracting party, as was the case in *Topco*. Both parties are also free to set whatever rates they wish to customers. The agreements only allow Western Union access to facilities in order to compete with other carriers, including those which provide the facilities. The agreements are also non-exclusive. Western Union can transit via other carriers, while TRT and FTC can offer transit service to other carriers (indeed they are required to do so under the RCCA). We perceive no antitrust violation.[29]

88. For these reasons, we conclude that the TRT and FTC agreements are "grandfathered" under Section 4 of the RCCA and otherwise lawful under the Communications Act.

89. One related question remains. Although Western Union and TRT differ somewhat on how important inbound, return traffic was as part of the consideration for their agreement, they do both agree that their expectation was that TRT would not hand off inbound traffic to Western Union and would retain any benefits in the form of increased allocations of inbound traffic which might result from the Western Union's outbound transiting traffic. The TRT contract provides "that all outbound overseas telex routing service (or similar) traffic transmitted by TRT pursuant to this Agreement will be considered TRT's traffic for purposes of obtaining allocations of return telex traffic from foreign correspondents." The FTC contract contains an identical provision. The issue of whether the pro rata requirement for inbound traffic should apply to "grandfathered" outbound traffic was not specifically raised in the *NPRM*, but in the *Interim Order* the Commission stated, 89 FCC 2d at 970, "Such contracts for the routing of outbound traffic will be included in the pro rata calculation. We note that [Section 4 of the RCCA] does not 'grandfather' contracts for the delivery of inbound record communications service."

90. TRT and FTC seek reconsideration of this language. They argue that the Commission should not and may not nullify or modify these provisions of the grandfathered contract by granting the benefit of return traffic to Western Union under the pro rata provision. Having examined this issue more closely, we will grant TRT and FTC's petitions on this point. The pro rata provision is one of the amendments made in Section 2 of the RCCA. Section 4 of the RCCA provides that amendments in Section 2 "shall not affect the validity of the terms of any otherwise lawful contract relating to the distribution of outbound international record traffic . . ." Although the return traffic provisions in the contracts do not concern outbound traffic itself, they are "terms of contracts relating to the distribution of" such traffic. Under Section 4, therefore, they are not subject to amendments adopted in Section 2 of the RCCA, including the pro rata provision.

8. *Resale Carriers and Carriers Without Operating Agreements*

91. ITT urges that the Commission clarify its intent as to the applicability of the outbound transiting arangements and pro rata return provisions to resale international carriers who lack agreements with foreign administrations.[30] Typically, these

[27] Although the Commission does have the responsibility to enforce the antitrust provisions of Section 11 of the Clayton Act, 15 U.S.C. § 21 (1976), it is doubtful that the Commission has specific authority to enforce the Sherman Act upon common carriers, except insofar as they are also radio licensees. Sections 313, 314 of the Communications Act, 47 U.S.C. 313, 314. However, we also recognize that competitive considerations are an important element of the public interest standard which governs our decisions. *Northern Natural Gas Co. v. FPC*, 399 F. 2d 953, 961 (D.C. Cir. 1968), *United States v. FCC*, 652 F. 2d 72 (D.C. Cir. 1980).

[28] In *Topco*, a group of supermarkets had allocated among themselves exclusive territorial franchises to market a line of products, in order to minimize competition at the retail level. They also imposed limitations upon reselling at the wholesale level. The Court found these territorial restrictions to be a per se violation of Section 1 of the Sherman Act.

[29] RCA is also incorrect that the agreement prevents reasonable and non-discriminatory access to an essential facility, Western Union's domestic telex network. All international carriers are guaranteed equal access to that network by the RCCA. The TRT and FTC agreements only allow Western Union's international operations access to the international networks of TRT and FTC. Neither of these networks are essential facilities in an antitrust sense.

[30] ITT characterizes them as "private network carriers."

carriers operate a U.S.-based operations center where traffic is collected, and use leased private lines to transmit messages overseas, e.g., to London. The messages are then retransmitted via the domestic telex network, e.g., British Telecom. By using computerized storage and high speed forwarding, and possibly by arbitrage of IRC services, service economies, and willingness to accept lower returns, these carriers can offer telex rates lower than the major IRCs. For example, International Relay Inc. (IRI) has a present rate to the U.K. of 40 cents a half minute or 80 cents a minute. ITT's rate is $1.03 a minute. ITT contends that the outbound formula would be unequitable as applied to these carriers. It calculates for example that it would receive less for transiting IRC traffic to the U.K. than it is required to pay to British Telecom. ITT also argues that Congress did not contemplate or intend an extension of the benefits of interconnection to carriers whose method of operations is outside the normal international communications process. ITT proposes that the Commission require such carriers to elect either to continue their present method of operations without benefit of outbound transiting arrangements, or to abandon their present method of operations and route all overseas traffic via a transiting IRC or a foreign administration.

92. Consortium Communications International, Inc. (CCI) and IRI oppose ITT's proposal. We need not discuss their opposition in detail, because ITT's position is manifestly in direct conflict with the language and purpose of the RCCA. Section 222(c)(1)(A)(i) states that:

> In implementing its responsibilities under section 201(a), the Commission shall require each record carrier to make available to any other record carrier, upon reasonable request, full interconnection with any facility operated by such record carrier, and used primarily to provide record communications service. Such facility shall be made available, through written agreement, upon terms and conditions which are just, fair, and reasonable, and which are otherwise consistent with the purposes of this section.

Section 222(c)(1)(A)(ii) requires that this agreement implement pro rata sharing of international inbound traffic.

93. This language is unambiguous. It requires full interconnection with any other record carrier during the three year transition period in which it is effective. There is no basis for restricting its operation to carriers who, in ITT's view, engage in "normal international communications arrangements." Indeed, a clear Congressional intent in adopting the RCCA was to allow open entry and free competition and to eliminate so far as possible the competition-inhibiting effects of operating agreements. We affirmed IRI's right to interconnection in the *Rejection Order.*[31]

94. ITT's claim that it must operate at a loss to provide transiting to IRI is also wrong. ITT's calculation is based on IRI's service to London. ITT claims that assuming a 39 cent domestic telex rate, it would receive only 41 cents per minute for transiting, less than the 60 cent payout to British Telecom. This claim is based on use of IRI's rate to determine whether the floor should apply. As we explained above, IRI's rate is irrelevant. In fact, ITT would receive $1.01 per minute under the formula,[32] far more than the 60 cent foreign payout and only two cents less than it receives from its own customers.

95. In sum, CCI, IRI, and all other record carriers are entitled to interconnection at the interim formula rate, and to the benefit of the pro rata provision.

9. *Mandatory use of U.S. IRCs for transiting*

96. RCA proposed in its comments to the *NPRM* that we require the mandatory use of U.S. carriers for transiting. The Commission rejected this proposal in the *Interim Order* as anti-competitive. 89 FCC 2d at 963, n. 36. RCA repeats this proposal in its petition for reconsideration. It urges that foreign transit services are diverting millions in rate payers' dollars to foreign communications entities which are typically state owned, and contends that proscribing this outflow would cause higher investment in the facilities of U.S. carriers, which, it is claimed, would benefit U.S. users. As RCA states it, this would be a mandatory "Buy America" policy for record communications services. As an alternative, RCA proposes that U.S. carriers be given a right of first refusal to match foreign transit charges. Western Union and Graphnet oppose RCA's request.

97. We continue to find no basis for RCA's proposal. The RCCA makes no provision for such a policy. To the contrary it espouses open entry into the international market and reduced regulation, not additional, restrictive regulations which would deter new entrants in order to benefit U.S. carriers with foreign operating agreements. RCA's proposal would provide a regulatory subsidy to IRCs with operating agreements at the expense of consumers, would impose cartelization upon U.S. transit traffic, and would be likely to initiate protectionist record communication trade wars. It would also represent further regulation in an effort to restrict the access of new and existing U.S. carriers to lower price service options and methods of international operations. Moreover, any such "Buy America" policy would be a significant act of foreign policy with implications for American treaty commitments. Graphnet states that such a regulation would effectively revoke its sole international operating agreement with the Philippines, because under the agreement the Philippines provides transiting services. Graphnet also argues that the proposal is beyond the scope of this proceeding. In fact, the proposal is directly inimical to the purposes of this proceeding and of the RCCA, and it is denied. We also see no purpose in imposing the alternative right of first refusal upon carriers. The Congress directed us to promote competition in the international market, not to impose barriers to its operation by eliminating the right of new carriers to enter into contracts of their choosing. The policy of the RCCA is to replace regulation with competition, yet RCA seeks to have us protect it from competition by additional regulations whose burden would lie on new entrants and whose effect would be to protect established oligopolists. RCA remains free, within the bounds of the RCCA, to compete for transit traffic on the same basis as other carriers.

10. *Classification of Puerto Rico*

98. In the Technical and Technical Related Issues section of the *Rejection Order,* the Commission noted that it was uncertain whether Puerto Rico, which has "commonwealth" status, should be considered a domestic U.S. point under Section 3(g) of the Communications Act. In view, of this uncertainty, the Commission permitted an agreement by the major carriers to proceed. Without classifying Puerto Rico, the agreement treats it "as if" it were an international point, when the Puerto Rico Communications Authority (PRCA) is not the carrier involved in the calls. In the case of calls originating or terminating on the PRCA, the *Rejection Order* instructed the U.S. carriers to develop technical and rate arrangements appropriate to meet the

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[31] We are not considering here the issue raised by Regulatory Policies Concerning Resale and Shared Use of Common Carrier International Communications Services, 77 FCC 2d 831 (1980).

[32] ITT would receive the foreign payout ($.60) plus half the remaining revenue ($1.03 − $.60) + .39 + 2 = $.41. Since the total of the domestic rate and transiting carrier ITT's rate is 1.42 ($.39 + $1.03) IRI would retain a total of $.41, and would be required to pay the domestic rate of $.39 for an actual net revenue of $.02. ITT's actual net revenue would be $.41.

goals of the RCCA. The Commission reserved the right to determine the ultimate classification of Puerto Rico as "domestic" or foreign". The PRCA requests reconsideration and a declaration that Puerto Rico is a domestic point for record services. In a recent order, the Commission had occasion to consider this issue directly and determined, as the PRCA contends here, that Puerto Rico is a domestic point under the Communications Act. *Puerto Rico Communications Authority*, FCC 83–28, released February 8, 1983. It also directed carriers to make appropriate corrections in their tariffs.

99. We still do not wish to alter the "as if" technical arrangements for interconnection with the PRCA at this time. To avoid uncertainty, however, we do believe that we should clarify application of the RCCA in one respect, at least until new interconnection arrangements are established. The PRCA is a domestic carrier and its local intra-island telex charge should be used as the domestic component for outbound, international telex calls originating on the PRCA network. The interconnecting IRC would then add its international component charge to yield the total, end-to-end rate. Each carrier would bill its own charges for these calls, as is the current practice. In order to implement this, each IRC must list the PRCA as an other common carrier in its public tariff and reference the PRCA's local tariff to obtain the domestic component.

11. *Settlement for Domestic Termination of Inbound Calls*

100. Historically, in settlements between the IRCs and Western Union for the domestic handling of inbound international telex calls, the IRCs have paid Western Union its full charge based on actual domestic minutes. ITT claims that its settlements with foreign administrations generally reflect less than the total number of traffic minutes received from each administration because of administrative traffic, accounting charges, and errors. It claims that the IRCs have absorbed a shortfall in settlements in the past, but proposes that settlements should now be based on international settlement minutes. It contends that Western Union will necessarily be bound by accepted international settlement principles in its own international operations, and argues that it would be fair and equitable to require interconnected inbound traffic to be based on these principles. Although the *Interim Order* provides that domestic minutes be used to calculate the domestic segment of international calls (89 FCC 2d at 970), ITT argues that this determination applied solely to outbound calls. Western Union opposes ITT's request, arguing that ITT has presented no evidence in support of its proposal and that it is merely an attempt to increase IRC revenues which are already far above costs. It contends there is no reason why any domestic carrier should be compensated for less than the actual usage of its domestic network as a result of billing disputes between foreign administrations and the U.S. international carrier.

101. As an initial matter, ITT is incorrect that the treatment of inbound minutes was left unresolved in the *Interim Order*. The Order stated that the carrier providing the domestic segment of any international call may base its cost on domestic minutes. This determination was not limited to outbound traffic. Moreover, the *Interim Order* also determined "that the existing arrangement for handling interconnected international inbound transmission was reasonable and worthy of continuance" 89 FCC 2d at 957. The existing arrangement uses domestic minutes. ITT also presents no evidence or information on the effect of its proposal, such as the number of minutes or amount of revenue involved, the delay necessary to determine international settlement minutes, or other factors. On the face of it, the logical basis for calculating a settlement for use of a domestic network is the actual domestic usage, and we believe that such an approach is at least most consistent—and perhaps actually required—by the dichotomy between domestic and international services mandated by the RCCA. The claim that the IRCs use international settlement minutes for settlement with their own domestic operation provides no persuasive basis for imposing that same regime upon other carriers. Indeed since ITT Worldcom is a single company and all international and domestic revenues go into a single "pot" the contention appears to be meaningless. None of the other carriers supported ITT on this point. In the absence of any evidence or persuasive argument in favor of the use of international settlement minutes, we deny ITT's request for reconsideration on this issue.

12. *Maritime Marine*

102. Maritime Marine Radio, Inc. (MMR) is a carrier providing voice and record maritime services, including telegram and telex, between vessels at sea and points on land both in the United States and abroad. It requests the Commission to extend the scope of the *Interim Order* to apply to record maritime communications carriers and services. Specifically, MMR submits that it is entitled to the benefits of the pro rata return flow provision for traffic originating abroad and routed via a record maritime communications carrier to ships at sea; that the Commission should act concerning outbound, unrouted maritime traffic; that the 15 percent interim discount should apply to traffic originating on a domestic network and interconnected with MMR for completion and to traffic from a vessel to MMR interconnected with a domestic network for domestic or foreign delivery; and that the 1.3 holding time factor should not apply to maritime traffic, or should apply only to directly connected traffic, not to store and forward telex.

103. Western Union states that its telex and TWX networks interconnect with MMR on a customer paid subscriber-line basis, i.e., Western Union subscribers dial MMR in the same fashion as any other subscriber. It argues that the 15 percent discount applies only to carrier-paid access and in any event that physical limitations in its network preclude giving its subscribers a 15 percent discount on customer-paid calls to MMR. It also contends that if MMR is eligible for carrier-paid access; it should be required to reimburse Western Union fully for the necessary interconnection costs. ITT argues that inbound international traffic routed to a U.S. carrier radio station for delivery to ships at sea is not within the contemplation of the pro rata requirement of the RCCA, and that the Commission itself has limited applicability of this provision to carriers authorized to provide point-to-point international record services, but unable to obtain operating agreements. In response to Western Union, MMR argues that the details of interconnections, including cost reimbursement, are beyond the scope of this reconsideration proceeding. It also states that clarification of the application of the 1.3 factor to maritime traffic should be resolved prior to any request for carrier-paid interconnection. MMR also argues that ITT's position on the pro rata requirement is an overly technical and impractical reading of the statute. It contends the pro rata provision should be read as requiring allocation of international inbound traffic among all interconnecting carriers, including domestic carriers, for subsequent delivery.

104. Specialized record services such as mobile marine service may well require special consideration to give practical effect to the RCCA, and the

scant record before us on reconsideration provides no adequate basis for such an undertaking. We limit these comments to the specific issues raised by MMR. First, all record carriers, including marine carriers, are subject to the RCCA. See *Rejection Order*, 91 FCC 2d at 498, n. 38. For example, they are entitled to interconnection with other record carriers. However, it appears that MMR is taking service under customer tariffs. There is no provision for a carrier discount in customer tariffs and no apparent cost difference which would justify such a discount. The prescribed 15 percent discount is available to MMR under the interconnection tariff, but we see no reason to require such a discount in the customer tariff. We express no view on the hypothetical question of how costs for interconnection should be apportioned if MMR chooses to request interconnection as a carrier.

105. Next, MMR is not entitled to any allocation of traffic under the pro rata provision in the circumstances it describes. The pro rata provision allocates service "between points outside the United States and points of entry in the United States" (Section 222(c)(a)(ii)(I)), i.e., inbound international traffic. MMR does not seek interconnection to provide this traffic. It interconnects with and exchanges traffic with domestic carriers. In the case of messages received by the domestic carrier from overseas, the pro rata provision applies to the international carriers handling the inbound portion, not to the domestic carriers who then receives it or to any subsequent interconnected carriers.[33] Properly, MMR's concern that it may be disadvantaged if domestic carriers favor their associated mobile marine services should be considered under Section 222(c)(1)(B). As we pointed out in the *Rejection Order*, n. 38, mobile marine service is a "foreign service" under 47 USC § 153(g) and thus an international service under the RCCA. See Section 222(a)(i). Domestic carriers offering mobile marine services are therefore required by Section 222(c)(1)(B) to treat their mobile marine operations as separate international operations for purposes of interconnection, and to make interconnection available to MMR and other carriers which is equal in type and quality, and available at the same rates and upon the same terms and conditions as that afforded their own mobile marine operations.[34] MMR's petition does not indicate whether this is the case, or whether it has requested such interconnection. MMR also makes no specific request for action regarding outbound unrouted maritime tariff, and it is not clear that Commission action is necessary or desirable. Finally, the question of whether to apply the 1.3 holding time factor to store and forward telex traffic is being considered in a separate proceeding decided this day.

13. *Prepublication Review of Other Carriers' Telex Directories*

106. WUI proposed in its comments responding to the NPRM that the Commission require each carrier to give all other carriers the right to pre-publication review of telex directories. Western Union opposed the proposal, arguing that WUI had shown no genuine need and that the proposal would involve carriers in each other's business affairs to an extent far beyond anything remotely contemplated by the RCCA. The Commission decided in the *Interim Order* that this tangential issue did not require disposition, 69 FCC 2d at 970. WUI repeats its request, and Western Union repeats its opposition. We have no more information on the competing considerations of fair competition and interconnection as opposed to the avoidance of unnecessary and intrusive regulation than at the time of the *Interim Order* and therefore do not believe that the issue should be decided at this time.

14. *Technical Issues*

107. Several of the petitions for reconsideration of the *Interim Order* raise various technical issues, such as conditions for TWX 110 Baud domestic interconnection, implementation of 3 digit TWX access for international service, and treatment of store-and-forward services. Many of the issues were resolved by agreements among the carriers reached in the course of meetings under the Commission's aegis. The Commission prescribed these agreements as binding upon all affected carriers in the *Rejection Order*. The technical issues raised in the pending petitions for reconsideration are resolved in a separate order issued this day and need not be considered here.

15. *Single Stage—Double Stage Dialing Access* [35]

108. The telex networks of Western Union and the IRCs were of course engineered before enactment of the RCCA. At that time, Western Union generally did not interconnect with other domestic carriers, but did allow its customers to choose among interconnected international carriers. The IRCs carried all calls from their own customers in the authorized gateways but did not interconnect with other IRCs. This difference in functions was reflected in different methods of operation and network design. Western Union's customers were directly connected with the Western Union network and could call other domestic subscribers on the network simply by dialing the subscriber's number. This is referred to as single stage dialing. To make an international call, a Western Union customer would first dial the three digit code for one of the IRCs. Once the customer was connected with the IRC, it would then dial the number of the foreign customer. This is called double stage dialing. The IRCs' customers could not make domestic calls, but were directly connected with the IRC's international network, which used single stage dialing for international calls.

109. *In the Interim Order*, the Commission sought to apply, in a practical fashion the RCCA's requirement that record carriers provide domestic-to-international interconnection to other record carriers on terms equal to those it gives itself. We specifically addressed the issue of parity in idaling stages, and, in view of the differently designed and configured networks, prescribed only generally equal or comparable interconnection. For example, we recognized that additional digits might be necessary to reach interconnected carriers by means of single stage dialing. For domestic service, we prescribed universal single stage access with a maxium of three additional digits. For international service, we allowed a choice of single or double stage access, so long as generally comparable access was offered to other carriers. If Western Union wished to maintain its double stage access to the IRCs service, it was required to use double stage access to reach its own international services. If the IRCs wished to maintain single stage dialing to their own services, they were required to offer comparable single stage access to Western Union's

[33] *See* House report at 10: "The Committee intends that this provision will only affect the distribution of traffic between the point of interconnection with a foreign correspondent and the point of entry into the United States, that is, the purely international segment of these circuits."

[34] We also directed that the domestic and international charges for marine services be unbundled in the *Rejection Order*, n. 38.

[35] Because Western Union and TRT's letters concerning single stage-double stage access raised new issues and were received only shortly before the Commission's review of the petitions for reconsideration, this section was not included in the order approved by the Commission at the March 3, 1983 meeting. The section was adopted by the Commission on circulation for inclusion with this order.

international services, possibly with additional digits.

110. In reaching this result, the Commission balanced two competing principles. A basic tenet of the RCCA is that equal interconnection with other carriers is essential to full and fair competition. If a carrier gave its domestic customers more desirable single stage access to its own international network, and required less convenient double stage dialing to reach other carriers at the same price, the effect would be to undermine this tenet. The practice would tend to promote cartelization among integrated, end-to-end carriers rather than competition among interconnected carriers. On the other hand, we did not wish to impose unreasonable expenses or degrade service to customers by requiring unnecessary dialing stages to achieve parity. We expected that allowing carriers a choice of access arrangements, so long as comparable access was offered to all other record carriers, would strike a reasonable balance.

111. RCA and WUI seek reconsideration on this issue. Each argues that the IRCs should be permitted to maintain their use of single stage dialing for their own domestic customers, but to offer only double stage dialing for calls via other IRCs, including Western Union's foreign services. They claim in support that the single stage access which can be offered to other carriers (without expensive system modification and service degradation to their own customers) cannot duplicate all the functions or pass all the information possible with double stage access. They have offered to provide Western Union with a basic single stage access lacking features such as departmental billing, but Western Union believed the lack of such features prevented use of this sort of access in a competitively viable offering. Western Union initially opposed reconsideration of this issue. It had proposed protocols for single stage access which were being considered in technical meetings with the IRCs and argued that the Commission properly applied the RCCA's "equal in type and quality" requirement.

112. In the subsequent technical meetings, the IRCs continued to insist that offering single stage dialing access of a quality comparable to that offered their own customers was prohibitively expensive. The IRCs in fact continued to offer single stage access selectively to their own international networks after the adoption of the *Interim Order* although none requested a stay or waiver of the *Interim Order's* resolution of this issue. Western Union, on the other hand, has complied with the *Interim Order* since it began offering international service in August 1982. It offers double stage dialing access to all international carriers, including its own international operations. No solution to this problem was reached in the technical meetings chaired by Commission staff.

113. In a February 8, 1983 letter to the Commission, Western Union now advises that it wishes to change its position on this issue.
It states that it no longer opposes RCA and WUI's request for reconsideration and endorses the view that each record carrier should be allowed to favor only its own customers with single stage international dialing. Western Union believes that the effectuation of parity in dialing stages is not possible within a reasonable period of time without considerable sacrifice in the quality of service, and it does not favor requiring the IRCs to provide double stage access to their own subscribers unnecessarily. However, Western Union also believes that single stage dialing is a distinctly superior form of access which gives the IRCs a clear competitive advantage in obtaining the outbound international traffic of their own subscribers. To mitigate its present competitive disadvantage, Western Union proposes to permit its subscribers to elect a new procedure which would allow them to route calls in the same manner as the IRCs' customers, i.e., by single stage access to Western Union's foreign service and by double stage access to the IRCs' foreign services. It states that this alternate procedure is intended primarily for customers whose traffic is predominantly international, and it expects only a minor fraction of its customers to elect to use it. Western Union also states that the same kinds of technical difficulties cited by the IRC preclude it from making this form of single-state access available to the IRCs.

114. TRT has responded to Western Union by letter, dated February 15, 1983. It contends that while it would be unduly burdensome to require the IRCs to establish costly new arrangements for single-stage access because their subscribers are connected to a single switching center, this does not necessarily apply to Western Union's multiple-switch domestic network. It believes the Commission might reasonably conclude that the IRCs need not offer equal connection in these circumstances, but that Western Union may not install new equipment to accord a similar interconnection advantage to its own international services. TRT argues that Western Unions' proposal to establish new arrangements for the purpose of favoring its own international service is clearly opposed to the language and intent of the RCCA and requests that the Commission direct Western Union not to implement the proposed arrangement at least until the conclusion of a separate proceeding to determine whether the arrangement is lawful under the RCCA.

115. Although the problem of access stage parity is plainly a difficult one, as this background demonstrates, we are not willing to abandon the effort to achieve a solution, as the IRCs and now Western Union urge. All of the carriers apparently agree that single stage dialing is a significantly superior form of access. Western Union, for example, believes that it suffers under a significant competitive disadvantage because the IRCs favor their customers with single stage dialing. TRT believes that discrimination in dialing stages plainly violates the RCCA, though it claims justifiable hardship in its own case. The RCCA's requirement (which is not sunsetted) that record carriers with significant market shares offer interconnection equal in type and quality might as a practical matter be severely eroded or defeated if carriers are permitted to favor their own operations in this way. The effective interconnection intended by Congress might never develop. At the same time our continuing efforts to seek a solution to this problem through negotiated development of uniform or mutually acceptable technical arrangements have not been successful. In the meantime, the IRCs have not complied with the *Interim Order* and have not sought a stay or a waiver.

116. Under these circumstances, we think it may be necessary to consider alternative approaches which will carry out the Congressional intent in a practical manner, at least on a temporary basis. If actual equipment modifications are prohibitively expensive, it may be appropriate to allow carriers to offer a better grade of service to their own customers, as the IRCs request, but to require that a compensating rate differential be applied where the more desirable interconnection is not afforded customers of other carriers. Imposing an appropriate rate differential would compensate for the carrier's failure actually to offer equal interconnection while implementing the intent of the RCCA, and would provide an incentive to develop interconnection

arrangements which are equal in fact. We propose for comment a flat rate differential of $.25 per message. We have used a similar approach to adjust for differences in quality of long distance telephone company access to local exchanges. *MTS/WATS Market Structure, Third Report and Order*, FCC 82-579, released February 28, 1983. Alternatively, carriers might be able to develop more nearly equal interconnection on a bilateral basis even if the development of an industry-wide plan presents a more difficult problem. TRT, for example, presented a plan for a kind of compromise arrangement at the last of the technical meetings. We request comments on whether either or both of these possibilities might accomplish the Congressional purpose. We specifically request the views of carriers and other interested persons on an appropriate rate differential to reflect the difference in quality of interconnection between single and double stage dialing, especially as this is perceived by telex customers. Comments are to be filed within 15 days of the publication of this order in the **Federal Register.** Reply comments are to be filed within an additional 15 days.

117. While this proceeding is underway, we will waive enforcement of the *Interim Order's* prescription of either full single or full double stage dialing for all interconnected carriers, to the extent of allowing carriers to offer single stage international dialing to their own domestic customers. This interim waiver will apply to Western Union as well as to the other record carriers. We reject TRT's argument that we in effect should single out Western Union for disparate treatment. Fair competition requires that the same rules be applied even-handedly to all record carriers. So long as the IRCs are allowed to deny equal interconnection because of limitations in their systems, we will allow Western Unon the same option. To grant the IRCs a competitive advantage so long as they are unable to change would give them a permanent incentive never to acquire the ability to change. It is our intention, and the directive of the RCCA, that the record carriers eventually provide equal interconnection even if this cannot be accomplished immediately.

Ordering Clauses

118. Accordingly, it is ordered, that the Petitions for reconsideration ARE GRANTED to the extent indicated above, but are otherwise denied.

119. It is further ordered, that all IRCs interconnecting with the Puerto Rico Communications Authority are directed to file tariff revisions implementing paras. 98 and 99 of this order no later than seven days after release of this order, to be effective on seven days' notice.

120. It is further ordered, that this order be printed in the **Federal Register.**

121. It is further ordered, that comments are to be filed concerning single stage-double stage dialing access, paras. 108–117 of this order, within 15 days of the publication of this order in the **Federal Register.** Reply comments are to be filled within an additional 15 days.

122. Pursuant to Section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354) it is certified, that Sections 603 and 604 of that act do not apply because this prescription will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. § 605(b) (1980 Supp.). The primary economic impact of this order will be upon carriers, not users.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix—Petitions for Reconsideration or Clarification of Interim Order

FTC Communications, Inc. (FTC)
ITT World Communications, Inc. (ITT)
RCA Global Communications, Inc. (RCA)*
TRT Telecommunications Corporation (TRT)
Western Union International, Inc. (WUI)**
Graphnet, Inc. (Graphnet)
Western Union Telegraph Company (Western Union)
Consortium Communications International, Inc. (CCI)
International Relay, Inc. (IRI)
Mobile Marine Radio, Inc. (MMR)

Oppositions or Comments

ITT	Western Union
TRT	CCI
RCA	IRI
WUI	MMR
Graphnet	

Replies

ITT	WUI
TRT	Western Union
RCA	MMR

Comments on Graphnet Market Share and Bearer Circuits

Graphnet	WUI
ITT	CCI
RCA	Roger W. Hubbel
TRT	

Replies

Graphnet	TRT
ITT	

Petitions for Reconsideration of Rejection Order

Puerto Rico Communications Authority (PRCA)	WUI

Opposition

Western Union

Contracts Claimed To Be Grandfathered, Filed in Response to Common Carrier Bureau Order Released August 25, 1982

TRT—Western Union	FTC—Western Union

Comments

RCA	Western Union
WUI	

Reply Comments

FTC	TRT

[FR Doc. 83-9974 Filed 4-18-83; 8:45 am]
BILLING CODE 6712-01-M

*RCA submitted a supplement to its petition with a motion to allow the filing. We grant the motion.

**WUI filed a petition to waive page limitation, which is granted.

Notices

Federal Register
Vol. 48, No. 76
Tuesday, April 19, 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.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

National Agricultural Research and Extension Users Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92-463, 86 Stat. 770-776) Science and Education announces the following meeting:

Name: National Agricultural Research and Extension Users Advisory Board.
Date: May 2-3, 1983.
Time:

8:30 a.m.-5:00 p.m., May 2, 1983;
8:30 a.m.-12:30 p.m., May 3, 1983.

Place: Sheraton-West Port Inn, 191 West Port Plaza, St. Louis, Missouri 63141.
Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.
Comments: The public may file written comments before or after the meeting with the contact person below.
Purpose: The board will be preparing a preliminary report of materials recommending responsibilities and allocations of funds among Federally supported agricultural research and extension agencies.

Contact Person for Agenda and More Information: Barbara L. Fontana, Executive Secretary, National Agricultural Research and Extension Users Advisory Board; Room 351-A, Administrative Building, U.S. Department of Agriculture, Washington, D.C. 20250; telephone (202) 447-3684.

Done in Washington, D.C., this first day of April 1983.

Barbara L. Fontana,
Executive Secretary, National Agricultural Research and Extension Users Advisory Board.

[FR Doc. 83-10318 Filed 4-18-83; 8:45 am]
BILLING CODE 3410-03-M

Rural Electrification Administration

Tri-County Electric Association, Inc., Sundance, Wyoming; Proposed Loan Guarantee

AGENCY: Rural Electrification Administration (REA).

ACTION: Proposed loan guarantee.

SUMMARY: Under the authority of Public Law 93-32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22, (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $9,476,000 to Tri-County Electric Association, Inc. (Tri-County), Sundance, Wyoming. This loan guarantee will provide supplemental funds needed to finance a project consisting of 26.2 miles of 230 kV transmission line, two transmission substations, engineering and related facilities.

FOR FURTHER INFORMATION CONTACT: Mr. Warren H. Fraser, Manager, Tri-County Electric Association, Inc., P.O. Box 930, Sundance, Wyoming 82729.

SUPPLEMENTARY INFORMATION: Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed project, including the engineering and economic feasibility studies and the proposed schedule for advances to the borrower of the guaranteed loan funds from Mr. Fraser at the address given above.

In order to be considered, proposals must be submitted on or before May 19, 1983 to Mr. Fraser. The right is reserved to give such consideration and to make such evaluation or other disposition of all proposals received as Tri-County and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20-22 are available from the Director, Public Information Office, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

(This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees)

Dated: April 12, 1983.

Harold V. Hunter,
Administrator.

[FR Doc. 83-10384 Filed 4-18-83; 8:45 am]
BILLING CODE 3410-15-M

Soil Conservation Service

Pt. Mugu Outlet, Revolon Watershed, California; Environmental Impact

AGENCY: Soil Conservation Service, Department of Agriculture.

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 Pt. Mugu Outlet, Revolon Watershed, Ventura County, California.

FOR FURTHER INFORMATION CONTACT: Eugene Andreuccetti, State Conservationist, Soil Conservation Service, 2828 Chiles Road, Davis, California 95616, telephone (916) 758-2200.

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, Eugene Andreuccetti, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for flood control. The planned works include excavation of 1,000 feet of new channel and the placement of rock riprap along Calleguas Creek at its confluence with the new channel.

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 Eugene Andreuccetti.

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. 10.904, Watershed Protection and Flood Prevention 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: March 31, 1983.

Eugene Andreuccetti,

State Conservationist.

[FR Doc. 83–10227 Filed 4–18–83; 8:45 am]

BILLING CODE 3410–16–M

CIVIL AERONAUTICS BOARD

[Docket 41306]

Unicorn Air Ltd., Fitness Investigation; Notice of Postponement of Hearing

Notice is hereby given that the hearing in the above-entitled proceeding which had been scheduled to be held before the undersigned Chief Administrative Law Judge on April 29, 1983, is hereby postponed until further notice.

Dated at Washington, D.C., April 13, 1983.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 83–10319 Filed 4–18–83; 8:45 am]

BILLING CODE 6320–01–M

[Docket 41422]

Tower Air Inc., Fitness Investigation; Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to commence on April 29, 1983, at 9:30 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C., before the undersigned Chief Administrative Law Judge.

Dated at Washington, D.C., April 13, 1983.

Elias C. Rodriquez,

Chief Administrative Law Judge.

[FR Doc. 83–10320 Filed 4–18–83; 8:45 am]

BILLING CODE 6320–01–M

CIVIL RIGHTS COMMISSION

Connecticut Advisory Committee; 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 Connecticut Advisory Committee to the Commission will convene at 7:00p and will end at 9:00p, on May 18, 1983, at the Connecticut Commission on Human Rights and Opportunities, 90 Washington Street, Hartford, Connecticut. The purpose of this meeting is to discuss plans for a study of the block grant program and followup activities to the battered women study.

Persons desiring additional information or planning a presentation to the Committee, should contact the Acting Chairperson, Judith H. Holmes, 24 Towne House Lane, Wethersfield, Connecticut 06109, (203) 247–9211 or the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110, (617) 223–4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 14, 1983.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 83–10341 Filed 4–18–83; 8:45 am]

BILLING CODE 6335–01–M

Illinois Advisory Committee; 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 Illinois Advisory Committee to the Commission will convene at 3:00p and will end at 10:00p, on May 6, 1983, at the Quality Inn, 400 North Vermilion, Danville, Illinois 61832. The purpose of this meeting is to consider updating of the Industrial Revenue Bond project, discuss the Chicago Affirmative Action project and receive information on local civil rights issues from community organizations.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Thomas J. Pugh, 500 West Melbourne Avenue, Peoria, Illinois, 61604, (309) 671–7475 or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604, (312) 353–7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 14, 1983.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 83–10344 Filed 4–18–83; 8:45 am]

BILLING CODE 6335–01–M

New Hampshire Advisory Committee; 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 New Hampshire Advisory Committee to the Commission will convene at 7:30p and will end at 9:30p, on May 11, 1983, at the Chubb Life America Building, One Granite Place, Concord, New Hampshire. The purpose of this meeting is to discuss plans for a study of the block grant program and followup activities to the Manchester study of programs for language minority students.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Andrew T. Stewart, Moose Mountain, Enfield, New Hampshire, 03748, (603) 523–4882 or the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts, 02110, (617) 223–4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 14, 1983.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 83–10343 Filed 4–18–83; 8:45 am]

BILLING CODE 6335–01–M

Rhode Island Advisory Committee; 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 Rhode Island Advisory Committee to the Commission will convene at 7:30p and will end at 9:00p, on May 25, 1983, at the U.S. Post Office, 24 Corliss Street, Providence, Rhode Island, 02904. At this meeting the Committee will review a draft of its redistricting report and receive reports from its affirmative action and education subcommittee on future projects.

Persons desiring additional information or planning a presentation to the Committee, should contact the Chairperson, Dorothy Davis Zimmering, 12 Chapin Road, Barrington, Rhode Island, 02806, (401) 245–3515 or the New England Regional Office, 55 Summer Street, 8th Floor, Boston, Massachusetts, 02110, (617) 223–4671.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 14, 1983.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 83-10342 Filed 4-18-83; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Postponement of Final Determination and Postponement of Hearing; Shop Towels of Cotton From the People's Republic of China

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Postponement of Final Antidumping Determination and Postponement of Hearing; Shop Towels of Cotton from the People's Republic of China.

SUMMARY: This notice informs the public that the Department of Commerce has received a request from China National Textiles Import and Export Corporation (Chinatex) and China National Arts and Crafts Import and Export Corporation (CNART) that the final determination be postponed until not later than 135 days after the date of the preliminary determination, as provided for in § 353.44(b) of the Department of Commerce Regulations (19 CFR 353.44(b)), and that the Department will postpone its final determination as to whether sales of shop towels of cotton from the People's Republic of China have occurred at less than fair value until not later than August 10, 1983.

The Hearing originally scheduled for May 2, 1983, at 10:00 a.m., in Conference Room 6802, has been postponed. The new hearing date is July 6, 1983, at 10:00 a.m., in Conference Room 6802. The prehearing briefs will be due on June 29, 1983.

Chinatex and CNART are qualified to make this request since they are exporters who account for one hundred percent of the merchandise which is the subject of the investigation. The additional time is necessary to enable Chinatex and CNART to prepare adequately for the hearing and to prepare the relevant briefs, which must address several novel issues raised by this investigation.

EFFECTIVE DATE: April 19, 1983.

FOR FURTHER INFORMATION CONTACT: Michael Ready or Rick Herring, Office of Investigations, Import Administration, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone (202) 377-2613 or 377-3963.

SUPPLEMENTARY INFORMATION: On September 13, 1982, the Department of Commerce published notice in the **Federal Register** (47 FR 41149) that it was initiating under section 732(b) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673a(b)), an antidumping investigation to determine whether shop towels of cotton from the People's Republic of China are being or are likely to be sold at less than fair value. The Department published an affirmative preliminary determination on March 28, 1983 (48 FR 12764). The notice stated that if this investigation proceeded normally we would make a final determination by June 6, 1983. Section 735(a)(2) of the Act provides that the Department of Commerce may postpone its final determination concerning sales at less than fair value if an exporter who accounts for a significant porportion of the merchandise which is the subject of the investigation requests an extension after an affirmative preliminary determination.

Accordingly, the Department will issue a final determination in this case not later than August 10, 1983.

This notice is published pursuant to section 735(d) of the Act.

Dated: April 12, 1983

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-10190 Filed 4-18-83; 8:45 am]

BILLING CODE 3510-25

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Changing T.S.U.S.A. Number for Certain Cotton Textile Products Produced or Manufactured in the Philippines

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Deleting T.S.U.S.A. Number 383.5040 from the coverage of the level of restraint established for Category 337 pt. (women's and girls' cotton playsuits), and replacing it with T.S.U.S.A. Number 383.5039 (corduroy playsuits other than infants' playsuits) produced or manufactured in the Philippines and exported during the agreement year which began on January 1, 1983.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175).

SUMMARY: Effective on April 1, 1983, T.S.U.S.A. Numbers 383.5038 (infants' corduroy playsuits and 383.5039 (other women's and girls' corduroy playsuits) were established within category 337, replacing T.S.U.S.A. Number 383.5040. Other women's and girls' corduroy playsuits, in T.S.U.S.A. Number 383.5039, are intended to be included under the level of restraint established for Category 337 pt.

EFFECTIVE DATE: April 21, 1983.

FURTHER INFORMATION CONTACT: Carl Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

SUPPLEMENTARY INFORMATION: On December 28, 1982, there was published in the **Federal Register** (47 FR 57986) a letter dated December 22, 1982 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton, wool, and man-made fiber textile products, including Category 337 pt. (women's and girls' cotton playsuits), produced or manufactured in the Philippines, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1983 and extends through December 31, 1983. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to replace T.S.U.S.A. 383.5040 with T.S.U.S.A. 383.5039 under the coverage of the level of restraint previously established for Category 337 pt. (cotton playsuits).

Dated: April 14, 1983.

Paul T. O'Day,

Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 22, 1982 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in the Philippines.

Effective on April 21, 1983, you are directed to delete T.S.U.S.A. Number 383.5040 from the coverage of the level of restraint established for Category 337 pt., and replace it with T.S.U.S.A Number 383.5039, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1983. You are further directed to exclude T.S.U.S.A. Numbers 383.5040 and

383.5038 in addition to T.S.U.S.A. NUmbers 383.0335, 383.0830, and 383.5036.

The actions taken with respect to the Government to the Republic of the Philippines and with respect to imports of cotton textile poroducts from the Philippine have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementatin of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-10340 Filed 4-18-83; 8:45 am]

BILLING CODE 3510-25-M

Amending the Export Visa and Exempt Certification Requirements for Certain Cotton, Wool, and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Announcing a change in the issuing authority for export visas and exempt certifications for certain cotton, wool, and man-made fiber textile products in Categories 300–369, 400–469, and 600–669, produced or manufactured in the Republic of Singapore, from the Department of Trade to the Trade Development Board. The visa and certification stamps are also being changed to show the new issuing authority.

A description of textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709).

SUMMARY: Under the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of August 21, 1981, as amended, between the Governments of the United States and the Republic of Singapore, the Government of the Republic of Singapore has notified the United States Government that, effective on May 15, 1983, the issuing authority for export visas and exempt certifications for textile and apparel porducts under the agreement will be the Trade Development Board. Facsimiles of new stamps are published as enclosures to the letter to the Commissioner of Customs which follows this notice.

EFFECTIVE DATE: May 15, 1983.

FOR FURTHER INFORMATION CONTACT: Ronald Sorini, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377–4212).

SUPPLEMENTARY INFORMATION: On February 16, 1982 a letter dated February 10, 1982 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the **Federal Register** (47 FR 6683) which established export visa and exempt certification requirements for certain cotton, wool, and man-made fiber apparel products, produced or manufactured in Singapore and exported to the United States on and after April 1, 1982. On November 26, 1982 a further letter dated November 19, 1982 was published in the **Federal Register** (47 FR 53446) from the Chairman of Committee for the Implementation of Textile Agreements to the Commissioner of Customs extending coverage of the existing export visa and exempt certification requirements to include cotton, wool, and man-made fiber textiles and textiles products, produced or manufactured in Singapore and exported on and after January 15, 1983. The letter published below amends the directives of February 10 and November 19, 1982 to change the issuing authority of the Government of the Republic of Singapore for export visas and exempt certifications to the Trade Development Board.

Dated: April 13, 1983.

Paul T. O'Day,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directives of February 10 and November 19, 1982, which established export visa and exempt certification requirements for certain cotton, wool, and man-made fiber textiles and textile products, produced or manufactured in the Republic of Singapore.

Effective on May 15, 1983, for merchandise exported on and after that date, the issuing authority designated by the Government of the Republic of Singapore for export visas and exempt certifications will be the Trade Development Board. New stamps including the name of the new issuing authority are enclosed. Merchandise exported before May 15, 1983 will not be denied entry if visaed or certified by either the Trade Development Board or the Department of Trade, provided all other requirements have been met.

The action taken with respect to the Government of the Republic of Singapore and with respect to imports of cotton, wool, and man-made fiber textiles and textile products from Singapore has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Paul T. O'Day,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-10339 Filed 4-18-83; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (92–463), announcement is made of the following Committee Meeting:

Name of committee: Army Science Board (ASB)

Dates of meeting: Thursday and Friday, 5–6 May 1983

Times: 0830–1700 hours (Closed) both days

Place: Hughes Aircraft Company, Fullerton, California

Agenda: The Army Science Board 1983 Summer Study on Acquiring Army Software will meet for classified briefings and discussions on current Army strategies, DoD software initiatives, and other service methodologies. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., App. 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Helen M. Bowen, may be contacted for futher information at (202) 695–3039 or 697–9703.

Helen M. Bowen,

Administrative Officer.

[FR Doc. 83-10329 Filed 4-18-83; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Dates of Meeting: Wednesday and Thursday, 11–12 May 1983.

Times: 0830–1700 hours (Closed) both days.

Place: Pentagon, Washington, D.C.

Agenda: The Army Science Board Ad Hoc Subgroup on the Ballistic Missile Defense Program will meet for classified briefings and discussions regarding advanced technology applications for BMD. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. App. 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Helen M. Bowen, may be contacted for further information at (202) 695–3039 or 697–9703.

Helen M. Bowen,

Administrative Officer.

[FR Doc. 83-10330 Filed 4-18-83; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Meeting Change

April 14, 1983.

The following change has occurred for meeting of the Army Science Board Ad Hoc Subgroup on Balancing Protection for the Individual Soldier, which was announced in the **Federal Register** issue of 1 April 1983 (48 FR 14022):

Dates of Meeting: Tuesday and Wednesday, 3–4 May 1983 (instead of Monday and Tuesday, 25–26 April 1983).

Helen M. Bowen,

Administrative Officer.

[FR Doc 83-10331 Filed 4-18-83; 8:45 am]

BILLING CODE 3710-08-M

Army Corps of Engineers

Environmental Impact, Walnut Creek Flood Control Project, Contra Costa County, California; Draft Supplement

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of Intent to prepare a draft supplement to the final environmental impact statement.

SUMMARY: *1. Proposed Action.* The Walnut Creek flood control project is a continuing construction project authorized for construction by the Flood Control Act of 1960. Under the original authorized plan of improvement, work which has been completed includes reaches of Walnut Creek and Pine and Galindo Creeks. This supplement describes the impacts associated with the San Ramon Creek segment. Construction will consist of an open concrete-lined bypass channel to control flooding in the community, minimize impacts to and to control erosion in the natural stream channel. State authorization designated the Contra Costa County Flood Control and Water Conservation District as the agency to fulfill the local interest responsibilities. The supplement is being prepared to describe up-dated environmental resource data and to describe impacts and mitigation. The San Ramon Bypass segment of the project is the next construction work to be accomplished. Previously completed segments such as Pine and Galindo Creeks and a planned additional segment, upper Pine Creek, will also be addressed.

2. *Alternatives.* There are currently seven structural alternatives and a no action plan under consideration for the San Ramon Creek reach. Five of the structural alternatives describe various bypass routes and one includes channelization of the natural channel.

3. *Scoping of the DEIS.* Close coordination will be maintained with local agencies, other Federal agencies, and interested organizations and individuals. Analyses of potential impacts will be assisted by this coordination.

4. *Scoping Meetings.* Environmental concerns related to potential future work have been identified during previous EIS coordination. Considerable local coordination has already been carried out by the Contra Costa County Flood Control and Water Conservation District. A formal public scoping meeting will not be held, but one or more informal meetings may be held with interested and concerned agencies, organizations and individuals to obtain any additional views of the public. Significant resources identified to date include the riparian vegetation along San Ramon Creek and Walnut Creek, fish and wildlife resources, and cultural resources. Participation in scoping and review of environmental concerns by all interested Federal, State and local agencies, and interested organizations and individuals is invited.

5. *Estimated Date of DEIS.* The Draft supplement is scheduled to be made available to the public in June 1983.

ADDRESS: Questions about the proposed action and draft supplement can be answered by: Mr. George Redpath, Environmental Planning Section, Sacramento District, Corps of Engineers, 650 Capitol Mall, Sacramento, California 95814, telephone (916) 440–2456 FTS (448–2456).

Dated: April 8, 1983.

Henry Lee,

Lieutenant Colonel, Corps of Engineers, Acting District Engineer.

[FR Doc. 83-10325 Filed 4-18-83; 8:45 am]

BILLING CODE 3710-GH-M

DEPARTMENT OF EDUCATION

Advisory Council on Educational Statistics; Meeting

AGENCY: Advisory Council on Education Statistics.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Comittee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: May 5 and 6, 1983.

ADDRESS: 1200 19th Street NW., Room 823, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: George D. Youstra, Executive Director, 1200 19th Street NW., (Brown Building) Room 723–A, Washington, D.C. 20036. Telephone—(202) 254–8227.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education

Statistics is established under section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93-380. The Council is established to review general policies for the operation of the National Center for Education Statistics and is responsible for establishing standards to insure that statistics and analyses disseminated by the Center are of high quality and are not subject to political influence.

The meeting of the Council is open to the public. The proposed agenda includes:

A report by the Administrator, National Center for Education Statistics, on recent activities of the National Center.

A report on The State of the Department of Education, Chairman, Donald J. Senese, Assistant Secretary, Educational Research and Improvement.

Update on Cooperative and Joint Endeavors, Deputy Administrator, National Center.

Report on Teacher Supply and Demand, Administrator, National Center.

"The Condition of Education"—1983, Division of Statistical Services, National Center.

Standards and Quality Control Response to Council Resolution, Administrator, National Center.

"Appropriate Organizational Arrangements for the Statistical Policy Function", Christopher De Muth, Administrator, OMB—Office of Information and Regulatory Affairs.

Such old business and new business as the chairman or the membership may put before the Council.

Records are kept of all Council proceedings, and are available for public inspection at the office of the Executive Director, Advisory Council on Education Statistics, 1200 19th Street NW., (Brown Building) Room 723-A, Washington, D.C. 20036.

Donald J. Senese,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 83-10314 Filed 4-18-83; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP83-216-000]

Arkansas Louisiana Gas Company, a Division of Arkla, Inc.; Request Under Blanket Authorization

April 14, 1983

Take notice that on March 3, 1983, Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP83-216-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Arkla proposes to construct and operate sales taps under the authorization issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in its request which is on file with the Commission and open to public inspection.

Applicant proposes the construction and operation of sales taps at points on its jurisdictional lines as follows:

Customer	Pipeline	Approximate location
W. J. Powell	A1-12	Near Winnsboro, Tex.
Mickey Stuckey	A	Near Bauxite, Ark.
William Chlon	2	Near Elk City, Okla.

Applicant states that the average annual requirements of domestic customers in this area is approximately 90 Mcf and that its system supply is adequate to provide the service. It is estimated that the cost of the proposed facilities is $3,840.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-10292 Filed 4-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RA83-8-000]

Asamera Oil (U.S.), Inc.; Filing of Petition for Review Under 42 U.S.C. 7194

April 14, 1983.

Take notice that Asamera Oil (U.S.), Inc. on April 8, 1983, filed a Petition for Review under 42 U.S.C. 7194(b) from an order of the Secretary of Energy (Secretary).

Copies of the petition for review have been served on the Secretary and all participants in prior proceedings before the Secretary.

Any person who participated in the prior proceedings before the Secretary may be a participant in the proceeding before the Commission without filing a motion to intervene. However, any such person wishing to be a participant must file a notice of participation on or before April 29, 1983, with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any other person who was denied the opportunity to participate in the prior proceedings before the Secretary or who is aggrieved or adversely affected by the contested order, and who wishes to be a participant in the Commission proceeding, must file a motion to intervene on or before April 29, 1983, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.1005(c)).

A notice of participation or motion to intervene filed with the Commission must also be served on the parties of record in this proceeding and on the Secretary of Energy through the Office of General Counsel, the Assistant General Counsel for Regulatory Litigation, Department of Energy, Room 6H-025, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Capitol St., N.E., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-10293 Filed 4-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-72-000]

Consolidated Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

April 14, 1983.

Take notice that Consolidated Gas Supply Corporation (Consolidated) on April 8, 1983, filed pursuant to Section 4 of the Natural Gas Act and § 154.63 of the Commission's Regulations Sixth Revised Sheet No. 66 and Second Revised Sheet No. 70-A to its FERC Gas Tariff, Third Revised Volume No. 1. These revised tariff sheets provide explicitly for the recovery through the purchased gas adjustment and surcharge provisions of amounts paid to Consolidated's pipeline suppliers under the minimum bill provisions of their FERC Gas Tariffs. These revised sheets would become effective April 1, 1983.

Copies of the filing were served upon Consolidated's jurisdictional customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before April 21, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are filed with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-10294 Filed 4-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-184-000]

Donald E. Hansen; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

April 14, 1983.

On February 10, 1983, Donald E. Hansen, 225 W. Galena Blvd., Aurora, Illinois 60506, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules. On March 11, 1983 supplementary information was filed regarding the application.

The topping-cycle cogeneration facility is located in Aurora, Illinois. The facility consists of a reciprocating engine and an induction generator. Waste heat is recovered for hot water heating. The electric power production capacity of the facility is 25 kilowatts. The primary energy source is natural gas. Installation of the facility began January 17, 1982. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-10295 Filed 4-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-2-23-000]

Eastern Shore Natural Gas Co.; Tariff Filing

April 14, 1983.

Take notice that Eastern Shore Natural Gas Company (Eastern Shore) on April 5, 1983, tendered for filing the following revised tariff sheets to Original Volume No. 1 of Eastern Shore's FERC Gas Tariff:

To Be Effective May 1, 1983

Twenty-Third Revised Sheet No. 5
Twenty-Third Revised Sheet No. 6
Eighth Revised Sheet No. 7
Twenty-Third Revised Sheet No. 10
Twenty-Third Revised Sheet No. 11
Twenty-Third Revised Sheet No. 12

Eastern Shore states that the purpose of the filing is to reflect a Purchased Gas Cost Current Adjustment, to reflect a Demand Charge Adjustment, to reflect a Deferred Gas Cost Adjustment, to report the Projected Incremental Pricing Surcharges, and to reflect a Transportation Surcharge Adjustment. This filing is being made in accordance with Sections 20, 21, and 23 of Eastern Shore's FERC Gas Tariff and provisions of the Stipulation and Agreement approved by letter order issued March 27, 1981 in Docket No. RP80-84.

Eastern Shore states that copies of the filing have been mailed to each of its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before April 21, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-10296 Filed 4-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-230-000]

Kerr-McGee Chemical Corp.—Trona; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

April 14, 1983.

On February 10, 1983, Kerr-McGee Chemical Corp., (Applicant) Trona, California 93562, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules. On March 28, 1983 additional information was filed regarding the application.

The topping-cycle cogeneration facility is located in Trona, California. The facility consists of two single automatic extraction non-condensing steam turbine generators. The electric power production capacity of the facility is 54 megawatts. The primary energy sources to the facility are coal and petroleum coke and incidental amounts of natural gas are used. Installation of the facility began in 1975. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-10297 Filed 4-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF83-232-000]

Kerr-McGee Chemical Corp.—Westend; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

April 14, 1983.

On February 28, 1983, Kerr-McGee Chemical Corp., (Applicant), Trona, California 93562, filed with the Federal Energy Regulatory Commission (Commission) an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's rules. On March 28, 1983, additional information was filed regarding the application.

The topping-cycle cogeneration facility is located at Applicant's chemical manufacturing plant in Westend, California. the facility consists of a gas turbine used to heat a waste heat recovery boiler and mechanical drive combined-cycle plant. The electric power production capacity of the facility is 17 megawatts. The primary energy source is natural gas or oil. Installation of the facility was completed in 1968. No electric utility, electric utility holding company or any combination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-10298 Filed 4-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-240-000]

Mississippi River Transmission Corp.; Request Under Blanket Authorization

April 14, 1983.

Take notice that on March 17, 1983, Mississippi River Transmission Corporation (MRT), P.O. Box 14521, St. Louis, Missouri 63178, filed in Docket No. CP83-240-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that MRT proposes to abandon natural gas service provided to Lexington-United, Inc. Plastics Division (Lexington-United) at its plant located in St. Louis, Missouri, and to abandon the facilities necessary to render such service under the authorization issued in Docket No. CP82-489-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Service, it is asserted, would be provided to Industrial Aid, Inc., successor of Lexington-United, by Laclede Gas Company, a local gas distributor.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursaunt to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-10299 Filed 4-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-10053-000, et al.]

Northern Natural Gas Producing Co., et al.; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

April 14, 1983.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 2, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
G-10053-000, D, Apr. 4, 1983	Northern Natural Gas Producing Co., Nine Greenway Plaza, Suite 2700, Houston, Tex. 77046.	Northern Natural Gas Co., Hugoton Field, Stevens et al. Countiirs, Kans.	(1)	
G-11742-008, D, Apr. 4, 1983	Mobil Oil Corp. Nine Greenway Plaza, Suite 2700 Houston, Tex. 77046.	Northwest Central Pipeline Corp., Hugoton Field, Grant and Kearny Counties, Kans.	(1)	
C62-859-000, D, Apr. 4, 1983	Gulf Oil Corp., Post Office Box 2100, Houston, Tex. 77252.	Texas Gas Transmission Corp., Duson Field, Lafayette Parish, La.	(2)	
C63-615-000, D, Mar. 29, 1983	Mobil Oil Corp., Nine Greenway Plaza, Suite 2700, Houston, Tex. 77046.	Natural Gas Pipeline Co. of America, Chitwood Field, Grady County, Okla.	(3)	
C76-502-001, D, Apr. 4, 1983	Gulf Oil Corp.	Tennessee Gas Pipeline Co., a division of Tenneco Inc., Blue Basin Field, Wharton County, Tex.	(4)	
C78-1173-002 April 4, 1983	do	Montana Dakota Utilities Co., Little Knife Field, Dunn, Billings and McKenzie Counties, N. Dak.	(5)	1473
C82-344-000 Mar. 28, 1983	do	West Lake Natural Gasoline Co. and ARCO Oil & Gas Co., a division of Atlantic Richfield Co., Nena Lucia Field, Nolan County, Tex.	(6)	
C83-183-000, (C175-183), B, Mar. 28, 1983.	Pangaea Resource Corp., 3002 Esso Plaza East, 425 1st Street, S.W., Calgary, Alberta, Canada T2P 3L8.	Colorado Interstate Gas Co., West Panhandle Field, Moore, Potter and Oldham Counties, Tex.	(7)	
C83-184-000, B, Mar. 24, 1983	Horizon Oil & Gas Co. of Texas, P.O. Box 7, Spearman, Tex. 79081.	Panhandle Eastern Pipe Line Co., Hallock "B" Lease, Borchers NW Area, Mead County, Kans.	(8)	
C83-185-000, B, Mar. 25, 1983	Tenneco Oil Co., Operator and Agent for Tenn Oil Co., P.O. Box 2511, Houston, Tex. 77001.	Warren Petroleum Co., Panhandle East Field, Wheeler County, Tex.	(9)	
C83-186-000, (C175-357), B, Mar. 25, 1983.	Eriserch Exploration, Inc., Post Office Box 2649, Dallas, Tex. 75221.	Natural Gas Pipeline Co. of America, San Martine Field, Reeves County, Tex.	(10)	
C83-187-000 (C175-357), B, Mar. 25, 1983.	do	Natural Gas Pipeline Co. of American, San Martine Field, Reeves County, Tex.	(10)	
C83-188-000 F, Mar. 28, 1983	ANR Production Co. (partial successor in interest to Conoco Inc.), 5075 Westheimer, Suite 1100, Galleria Towers West, Houston, Tex. 77056.	Transcontinental Gas Pipe Line Corp., Block A-85, Mustang Island Area, Offshore Texas, Federal Domain.	(11)	1473
C83-189-000, B, Mar. 28, 1983	ARCO Oil & Gas Co., Division of Atlantic Richfield Co., Post Office Box 2819, Dallas, Tex 75221.	Trunkline Gas Co., Quicksand Creek Field, Newton County, Tex.	(12)	
C83-190-000 (G-14225), B, Mar. 28, 1983.	Mobil Oil Exploration & Producing Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston, Tex. 77046.	Columbia Gas Transmission Co., South Thornwell Field, Jefferson Davis Parish, La.	(13)	
C83-191-000 (G-15114), B, Mar. 28, 1983.	Monsanto Oil Co., 1300 Post Oak Tower, 5051 Westheimer, Houston, Tex. 77056.	Transcontinental Gas Pipe Line Corp., Cowpen Creek Field, Beauregard Parish, La.	(14)	
C83-192-000, A, Mar. 29, 1983	Sonat Exploration Co., Post Office Box 1513, Houston, Tex. 77521.	Tennessee Gas Pipeline Co., Eugene Island Block 24, Offshore La.	(15)	14.73
C83-193-000 (C175-259), B, Mar. 29, 1983.	Texas Eastern Exploration Co., P.O. Box 2521, Houston, Tex. 77252.	Texas Eastern Transmission Corp., Hospital Bayou Fd., La Fourche Parish, La.	(16)	
C83-194-000, (C175-256), B, Mar. 29, 1983.	do	Texas Eastern Transmission Corp., South Thornwell Fd, Cameron Parish, La.	(17)	
C83-195-000, A, Mar. 30, 1983	Tenneco Oil Co., P.O. Box 2511, Houston, Tex. 77001.	Florida Gas Transmission Co., Eugene Island South Addition Area, Block 367 and Ship Shoal South Addition, Area Block 343, Offshore La.	(18)	15.025
C83-196-000 (C179-639), B, Mar. 31, 1983.	Tenneco Exploration, Ltd.	Columbia Gas Transmission Corp., South Marsh Island Block 267, Offshore La.	(19)	
G-3894-009, D, Mar. 21, 1983	ARCO Oil & Gas Co., Division of Atlantic Richfield Co., Post Office Box 2819, Dallas, Tex. 75221.	Tennessee Gas Pipeline Co., Jake Hamon (Rhodes) Field, McMullen County, Tex.	(20)	
C83-179-000, A, Mar. 23, 1983	Amoco Production Co., P.O. Box 50879, New Orleans, La. 70150.	Amoco Gas Co., Matagorda Island Area, Offshore, Tex.	(21)	14.73
G-5046-000, D, Apr. 4, 1983	Shell Oil Co., One Shell Plaza, P.O. Box 2463, Houston, Tex. 77001.	United Gas Pipe Line Co., West Lake Verret Field, St. Martin Parish, La.	(22)	

[1] To release gas for irrigation fuel.
[2] Leases have terminated.
[3] Release non-producing acreage.
[4] By assignment Gulf surrendered to Tartan Resources Corporation their interest in certain leases in the Blue Basin Field, Wharton County, Texas.
[5] Applicant is filing to change delivery point and the designation of an additional delivery point.
[6] Applicant requests termination of certificate and cancellation of FERC G.R.S. No. 227 because Original contract containing percentage of fixed sum minimum price provisions has been cancelled and superseded by a bona fide percentage of proceeds contract.
[7] Applicant's leasehold rights expired by the terms of the lease on approximately 27,351.75 undeveloped acres. Applicant will continue service from its developed acreage which totals approximately 3,000 acres.
[8] No commercial production.
[9] Establishment of percentage-type contract status.
[10] Reserves depleted.
[11] By assignment dated December 31, 1982, Conoco, Inc. transferred 40% of its rights, and interest in the lease comprising Block A-85, Mustang Island Area, East Addition, and the contract dated September 1, 1961, between Conoco, Inc. and Transcontinental Gas Pipe Line Corporation to applicant.
[12] The contract reached its primary term January 1, 1982. All leases covered under this contract except 11 and 20 were abandoned February 1, 1980. Leases 11 and 20 are now non producing mineral duds and are perpetual leases.
[13] Production from the Unit ceased on October 15, 1981, and the acreage has been released.
[14] Contract expired by its own terms on September 7, 1976. There has been no production under this contract for many years and the leases committed reverted to the landowners approximately fourteen years ago.
[15] Applicant is filing under Gas Purchase And Sales Agreement dated March 24, 1983.
[16] Last well plugged and abandoned on August 27, 1976.
[17] Last well plugged and abandoned on March 26, 1981.
[18] Applicant is filing under Gas Purchase Contract dated March 29, 1983.
[19] Depletion of reserves from South Marsh Block 267, Offshore Louisiana.
[20] Deletion of acreage. ARCO has no remaining reserves or production in leases involved in this application.
[21] Applicant is filing under Gas Purchase Contract dated March 14, 1983.
[22] Due to lessor demand for release of nonproducing lease acres, Shell complied.
Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 83-10000 Filed 4-18-83; 8:45 am]

BILLING CODE 6717-01

[Docket No. QF83-215-000]

Or-Sol Inc.—Bristol; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

April 14, 1983.

On March 14, 1983, Or-Sol Inc., c/o Ormat Engineering Inc., 1900 Washington Boulevard, Seattle, Washington 98101, filed with the Federal Energy Regulatory Commission (Commission) and application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's rules.

The facility will be a solar and power plant located at the Bristol Dry Lake in San Bernardino, California. The net power production capacity of the facility will be 20 MW. The primary energy source of the facility will be solar insolation, with approximately 10 percent of energy input being fuel oil. No other solar-powered small power production facilities owned by Or-Sol Inc. will be located within one mile of

the facility. No electric utility, holding company or any conbination thereof has any ownership interest in the facility.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions of protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-10001 Filed 4-18-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-6619-000, et al.]

Sun Exploration and Production Co. and Corporate Name Change

April 14, 1983.

Take notice that on December 23, 1981, Sun Oil Company (Delaware) ("Sun") of P.O. Box 20, Dallas, Texas 75221, filed in Docket Nos. G-6619-000, *et al.*, an application for Amendment of Certificates And Redesignation of Rate Schedules as listed in the attached Appendix to reflect Sun's change of corporate name from Sun Oil Company (Delaware) to Sun Exploration and Production Company.

The new corporate name, Sun Exploration and Production Company, became effective October 29, 1981. Sun amended its Certificate of Incorporation with the State of Delaware to reflect its new corporate name.

Notice is hereby given that all the certificate and rate schedules as listed in the attached Appendix are hereby redesignated to reflect the corporate name change from Sun Oil Company (Delaware) to Sun Exploration and Production Company, effective October 29, 1981.

Kenneth F. Plumb,

Secretary.

APPENDIX

Rate schedule No.	Certificate Docket	Purchaser
1	G-6619	El Paso Natural Gas Co.
5	G-6628	Transcontinental Gas Pipeline.
6	G-6629	Transcontinental Gas Pipeline.
8	G-16846	Natural Gas P/L of America.
9	G-6631	Tennessee Gas Pipeline Co.
11	G-6663	Tennessee Gas Pipeline Co.
13	G-6635	Tennessee Gas Pipeline Co.
17	G-6639, G-8683.	United Gas Pipeline Co.
18	G-6640	United Gas Pipe Line Co.
20	G-6642	United Gas Pipe Line Co.
21	G-6643	United Gas Pipe Line Co.
23	G-6645	Texas Eastern Transmission.
26	G-6648	Texas Gas Transmission Corp.
27	G-6670	Transcontinental Gas Pipeline.
28	G-6839	Texas Eastern Transmission.
30	G-6649	El Paso Natural Gas Co.
33	G-6652	Tennessee Gas Pipeline Co.
35	G-6654	Texas Eastern Transmission.
37	G-6837	Tennessee Gas Pipeline Co.
38	G-3653	Columbia Gas Transmission.
41	G-3965	Texas Gas Pipeline Co.
42	G-3966	Texas Gas Pipeline Co.
47	G-7345	Lone Star Gas.
49	G-7346	Lone Star Gas.
58	G-6656	El Paso Natural Gas.
60	G-6663	Northern Natural Gas Co.
61	G-6659	El Paso Natural Gas Co.
65	G-8591	El Paso Natural Gas Co.
66	G-8592	United Gas Pipe Line Co.
69	G-9462	Cities Service Gas Co.
70	G-9483	Tennessee Gas Pipeline Co.
71	G-9989	Transco Gas Pipeline Co.
72	G-10480	Tennessee Gas Pipeline Co.
73	G-10672	Colorado Interstate Gas Co.
74	G-10819	Texas Eastern Transmission.
76	G-11116	Columbia Gas Transmission.
78	G-11072	Panhandle Eastern Pipe Line.
80	G-11854	El Paso Natural Gas Co.
84	G-12548	Northern Natural Gas Co.
86	G-12972	Michigan Wisconsin Pipeline.
87	G-13059	Southern Natural Gas Co.
88	G-13046	Texas Eastern Transmission.
89	G-13362	Trunkline Gas Co.
91	G-13748	Texas Eastern Transmission.
94	G-13931	Northern Natural Gas Co.
95	G-14403	El Paso Natural Gas Co.
98	G-15267	Columbia Gas Transmission.
99	G-15434	Kansas Nebraska Natural Gas.
100	G-15424	West Lake Natural Gasoline.
101	G-14254	Transco Gas Pipeline.
103	G-17841	Colordao Interstate Gas.
105	G-18243	Texas Gas Transmission.
106	G-16541	Natural Gas P/L Co. of America.
107	G-18737	Natural Gas P/L co. of America.
108	G-16774	El Paso Natural Gas Co.
109	G-18909	Natural Gas P/L Co. of America.
113	G-19574	Southern Natural Gas Co.
114	G-15122	United Gas Pipeline Co.
115	G-16526	Transcontinental Gas Pipe Line.
117	CI60-218	Arkansas Louisiana Gas Co.
122	G-15791	Transwestern Pipeline Co.
124	CI61-372	Transwestern Pipeline Co.
126	CI61-657	Tennessee Gas Pipeline Co.
129	CI61-956	Valero Interstate Transmission.
130	CI61-992	Michigan Wisconsin Pipeline.
132	CI61-1432	Transwestern Pipeline Co.
133	CI61-1584	Tennessee Gas Pipeline Co.
135	CI62-165	Natural Gas P.'L Co. of America.
137	CI62-156	Southern Natural Gas Co.
140	CI62-387	Arkansas Louisiana Gas Co.
141	CI62-470	Arkansas Louisiana Gas Co.
143	CI62-1003	El Paso Natural Gas Co.
144	CI62-1038	Northern Natural Gas Co.
146	CI62-1111	Michigan Wisconsin Pipeline.
147	CI62-1188	Tennessee Gas Pipeline Co.
148	CI61-1102	Michigan Wisconsin Pipeline.
149	CI62-1352	Arkansas Louisiana Gas Co.
150	CI63-13	El Paso Natural Gas Co.
151	CI63-35	El Paso Natural Gas Co.
155	CI63-1142	Northern Natural Gas Co.
156	CI63-1335	Cities Service Gas Co.

APPENDIX—Continued

Rate schedule No.	Certificate Docket	Purchaser
158	CI63-1427	Arkansas Louisiana Gas Co.
159	CI63-1543	Northern Natural Gas Co.
160	CI64-315	Tennessee Gas Pipeline Co.
161	CI64-352	Texas Eastern Transmission.
162	CI64-353	Texas Eastern Transmission.
164	CI64-470	Natural Gas P/L Co. of America.
165	CI64-648	Arkansas Louisiana Gas Co.
167	CI64-885	Cities Service Gas Co.
168	CI64-981	Northern Natural Gas Co.
169	CI64-1166	Mountain Fuel Resources.
170	G-14943	Tennessee Gas Pipeline Co.
171	G-14943	Tennessee Gas Pipeline Co.
172	CI64-1271	Panhandle Eastern Pipeline.
173	CI64-1425	Arkansas Louisiana Gas Co.
174	CI64-1387	El Paso Natural Gas Co.
176	CI65-353	El Paso Natural Gas Co.
177	CI65-541	Valero Interstate Transmission.
178	CI65-512	West Texas Gathering Co.
180	CI65-592	Lone Star Gas Co.
183	CI65-936	Natural Gas P/L of America.
185	CI65-583	Natural Gas P/L of America.
187	CI65-1236	Cities Service Gas Co.
191	CI66-201	Panhandle Eastern P/L.
192	CI66-202	Northern Natural Gas Co.
196	CI66-569	Texas Gas Transmission.
197	CI66-720	Panhandle Eastern Pipeline.
199	CI66-781	Cities Service Gas Co.
200	CI66-1130	United Gas Pipeline Co.
201	CI66-376	Trunkline Gas Co.
202	CI66-1327	United Gas Pipeline Co.
203	CI67-84	United Gas Pipeline Co.
204	CI67-153	Panhandle Eastern Pipeline.
205	CI67-172	Southern Natural Gas Co.
206	CI66-831	Texas Eastern Transmission.
207	CI67-222	Panhandle Eastern Pipeline.
208	CI67-152	Panhandle Eastern Pipeline.
209	CI66-891	Texas Eastern Transmission.
210	CI67-516	Arkansas Louisiana Gas Co.
211	CI67-734	Northern Natural Gas Co.
213	CI61-1710	Valley Gas Transmission.
214	CI67-1022	Mountain Fuel Resources.
218	CI67-1609	United Gas Pipeline Co.
219	CI68-32	Lone Star Gas Co.
220	CI68-33	Lone Star Gas Co.
221	CI67-994	Transwestern Pipeline Co.
222	CI68-200	Arkansas Louisiana Gas Co.
223	CI68-201	Columbia Gas Transmission.
224	CI68-527	Transco Gas Pipeline Corp.
226	CI68-846	Breckenridge Gasoline Co.
227	CI68-656	Panhandle Eastern Pipeline.
229	CI68-1074	Michigan Wisconsin Pipeline.
231	CI68-1248	Diamond Shamrock Corporation.
232	G-4684	Colorado Interstate Gas Co.
233	CI65-989	Northern Natural Gas Co.
234	CI69-173	Panhandle Eastern Pipeline.
235	CI69-174	Panhandle Esstern Pipeline.
237	CI69-176	Lone Star Gas Company.
238	CI61-576	Cities Service Gas Co.
239	CI69-177	Cimarron Transmission Co.
240	CI69-179	Lone Star Gas Co.
241	CI69-334	Natural Gas P/L of America.
242	CI69-425	El Paso Natural Gas Co.
248	CI69-1005	Natural Gas P/L of America.
251	CI70-134	Southern Natural Gas Co.
252	CI70-266	El Paso Natural Gas Co.
253	CI62-890	Northern Natural Gas Co.
254	CI70-458	Florida Gas Transmission.
255	CI66-908	Panhandle Eastern Pipeline.
256	CI70-674	N-I Gas Supply, Inc.
400	CI61-1619	Panhandle Eastern Pipeline.
402	CI62-1412	Ringwood Gathering.
403	CI63-151	Northern Natural Gas.
404	CI63-150	Northern Natural Gas.
405	CI63-721	Tex-Eastern Transmission.
408	CI63-1502	El Paso Natural Gas.
409	CI64-40	Arkansas Louisiana Gas.
410	CI64-32	Arkansas Louisiana Gas.
411	CI64-33	Arkansas Louisiana Gas.
412	CI64-34	Arkansas Louisiana Gas.
413	CI64-106	Northern Natural Gas.
414	CI64-137	Panhandle Eastern Pipeline.
415	CI64-158	Southern Union Gathering.
416	CI64-261	Arkansas Louisiana Gas.
417	CI64-555	Northern Natural Gas.

APPENDIX—Continued

Rate schedule No.	Certificate Docket	Purchaser
418	CI64-543	Northern Natural Gas.
419	CI63-1407	Kansas Nebraska Natural Gas.
420	CI64-335	Natural Gas Pipeline.
421	CI64-875	Arkansas Louisiana Gas.
422	CI64-1462	CRA, Inc.
424	CI65-164	Texas Eastern Transmission.
426	CI64-1247	Mountain Fuel Resources.
427	CI65-8512	Panhandle Eastern Pipeline.
428	CI65-1053	Northern Natural Gas.
429	CI65-1189	Arkansas Louisiana Gas.
430	CI65-1228	Michigan Wisconsin Pipeline.
431	CI65-1243	El Paso Natural Gas.
432	CI66-19	El Paso Natural Gas.
434	CI66-172	Texas Gas Transmission.
435	CI66-470	Arkansas Louisiana Gas.
438	CI66-723	Northern Natural Gas.
439	CI66-418	Michigan Wisconsin Pipeline.
441	CI66-419	Michigan Wisconsin Pipeline.
442	CI66-877	Michigan Wisconsin Pipeline.
443	CI66-864	Michigan Wisconsin Pipeline.
444	CI66-1328	Panhandle Eastern Pipeline.
445	CI67-41	Northern Natural Gas.
447	CI67-230	Trunkline Gas.
448	CI67-1006	Cities Service Gas.
449	CI63-1266	Valley Gas Transmission.
450	CI67-1065	Ringwood Gathering.
451	CI64-763	Natural Gas Pipeline of America.
454	CI68-680	Panhandle Eastern Pipeline.
455	CI68-788	Michigan Wisconsin Pipeline.
457	CI68-866	Panhandle Eastern Pipeline.
458	CI67-1656	Transwestern Pipeline.
459	CI68-1140	Arkansas Louisiana Gas.
460	CI68-1141	Arkansas Louisiana Gas.
461	G-5173, G-5181.	Northern Natural Gas.
462	G-14931	Northern Natural Gas.
332	G-11782, G-16010.	Northern Natural Gas.
334	G-12113	El Paso Natural Gas.
335	G-10706	Cities Service Gas.
337	G-12784	Texas Eastern Transmission.
338	G-11122	Colorado Interstate Gas.
339	G-12901	Northern Natural Gas.
340	G-12902	El Paso Natural Gas.
342	G-13004	United Gas Pipeline.
344	G-4281	Natural Gas P/L of America.
346	G-13634	Northern Natural Gas.
349	G-14143	Northern Natural Gas.
350	G-15199	El Paso Natural Gas.
352	G-12211	United Gas Pipeline.
353	G-15800	El Paso Natural Gas.
355	G-16109	Colorado Interstate Gas.
356	G-14268	Northern Natural Gas.
357	G-14347	Panhandle Eastern Pipeline.
358	G-16104	Northern Natural Gas.
359	G-16134	Natural Gas P/L of America.
361	G-17461	United Gas Pipeline.
363	G-3806	Colorado Interstate Gas.
364	G-3887	Tennessee Gas Pipeline.
365	G-18630	Michigan Wisconsin Pipeline.
366	G-18614	Colorado Interstate Gas.
367	G-13011	Columbia Gas Transmission.
368	G-18294	Texas Gas Transmission.
371	G-14753	Transcontinental Gas Pipeline.
372	G-19409	Panhandle Eastern Pipeline.
373	G-19511	Valero Interstate Transmission.
374	G-6053	United Gas Pipeline.
375	G-20092	Arkansas Louisiana Gas.
376	G-18774	El Paso Natural Gas.
378	CI60-85	United Gas Pipeline.
380	CI60-163	Natural Gas Pipeline of America.
381	CI60-205	Arkansas Louisiana Gas.
382	CI60-250	United Gas Pipeline.
383	CI60-353	Trunkline Gas Co.
384	G-17899	South Texas Natural Gas.
386	CI60-809	Texas Gas Transmission.
387	G-5176	Panhandle Eastern Pipeline.
388	G-18142	Transwestern Pipeline.
389	G-3815	Cities Service Gas.
390	G-9530	Tennessee Gas Pipeline.
392	CI91-1147	Michigan Wisconsin Pipeline.
393	CI61-1201	Michigan Wisconsin Pipeline.
394	CI61-1229	United Gas Pipeline.
395	CI62-482	Northern Natural Gas.
396	G-8286	Transcontinental Gas Pipeline.
399	CI61-1395	Cities Service Gas.
257	CI70-729	Transco Gas Pipeline.
258	G-3884	Tennessee Gas Pipeline.

APPENDIX—Continued

Rate schedule No.	Certificate Docket	Purchaser
263	G-5932	Arkansas Louisiana Gas.
266	G-6048	Transcontinental Gas P/L.
267	G-5133	National Fuel Gas Supply.
269	G-4948	United Gas Pipeline.
270	G-5175	United Gas Pipeline.
272	G-4946	United Gas Pipeline.
273	G-5135	Transcontinental Gas P/L.
275	G-4949	United Gas Pipeline.
276	G-4950	United Gas Pipeline.
277	G-5130	Texas Eastern Transmission.
278	G-4915	Phillips Petroleum Co.
280	G-4945	United Gas Pipeline.
282	G-5131	Texas Eastern Transmission.
283	G-4947	United Gas Pipeline.
284	G-5125	Tennessee Gas Pipeline.
285	G-4916	Phillips Petroleum Co.
287	G-4917	Transcontinental Pipeline.
288	G-5134	United Gas Pipeline.
290	G-4953	United Gas Pipeline.
291	G-6050	Arkansas Louisiana Gas.
292	G-6057	United Gas Pipeline.
294	G-5182	Colorado Interstate.
295	G-5160	Michigan Wisconsin Pipeline.
297	G-5178	Cities Service Gas Co.
298	G-5177	El Paso Natural Gas Co.
299	G-5174	El Paso Natural Gas Co.
300	G-5172	Northern Natural Gas Co.
301	G-6045	United Gas Pipeline.
303	G-8663	Tennessee Gas Pipeline.
306	G-8826	United Gas Pipeline.
308	G-2978	El Paso Natural Gas.
309	G-2979	Phillips Petroleum.
310	G-2991	Texas Gas Transmission.
311	G-3810	El Paso Natural Gas.
313	G-3812	El Paso Natural Gas.
314	G-3813	Northern Natural Gas.
315	G-3617	Dorchester Gas Producing.
316	G-4416	El Paso Natural Gas.
317	G-4268	Colorado Interstate Gas.
318	G-4511	El Paso Natural Gas.
319	G-9257	El Paso Natural Gas.
321	G-9782	Peoples Natural Gas.
323	G-10370	Colorado Interstate Gas.
324	G-10621	Northern Natural Gas.
325	G-10776	Panhandle Eastern Pipeline.
326	G-10757	Cities Service Gas.
328	G-10775	Texas Eastern Transmission.
330	G-11661	Texas Eastern Transmission.

Sun Oil Company (Delaware) Rate Schedule No.	Certificate Docket	Purchaser
463	CI69-5	Northern Natural Gas.
464	CI69-6	Colorado Interstate Gas.
466	CI66-7	Lone Star Gas.
467	CI69-286	Natural Gas Pipeline of America.
468	CI69-0328	Natural Gas Pipeline of America.
469	CI69-0438	Natural Gas Pipeline of America.
471	CI69-682	Transcontinental Pipeline.
472	CI69-600	United Gas Pipeline.
473	CI69-1013	Natural Gas Pipeline of America.
474	CI69-1050	Texas Eastern Transmission.
478	CI70-234	Breckenridge Gas.
479	CI70-775	Pacific Lighting Service.
480	CI70-657	Transco Gas Pipeline.
481	CI65-1327	Michigan Wisconsin Pipeline.
482	CI69-672	Transco Gas Pipeline.
483	CI66-945	Panhandle Eastern Pipeline.
484	CI70-927	Michigan Wisconsin Pipeline.
485	CI70-654	Transco Gas Pipeline.
486	CI71-358	Michigan Wisconsin Pipeline Co.
487	CI63-1239	Northern Natural Gas Co.
489	CI70-468	Tennessee Gas Pipeline Co.
492	CI71-506	Cities Service Gas Co.
493	CI71-526	El Paso Natural.
494	CI71-209	Transco.
497	CI71-872	Michigan Wisconsin Pipeline Co.
498	CI71-825	Arkansas Louisiana Gas.

Sun Oil Company (Delaware) Rate Schedule No.	Certificate Docket	Purchaser
499	CI72-41	United Gas Pipe Line Co.
500	CI69-549	Michigan Wisconsin Pipeline Co.
501	CI72-183	Michigan Wisconsin Pipeline Co.
503	CI72-304	Columbia Gas Transmission Corp.
505	CI72-414	Florida Gas Transmission Co.
506	CI72-466	Arkansas Louisiana Gas Co.
509	CI72-706	Transwestern Pipeline Co.
510	CI72-724	Michigan Wisconsin Pipeline Co.
512	CI73-70	El Paso Natural Gas Co.
514	CI71-786	United Gas Pipe Line Co.
515	CI73-570	Arkansas Louisiana Gas Co.
516	CI73-687	El Paso Natural Gas Co.
517	CI73-878	Trunkline Gas Co.
518	CI73-879	Trunkline Gas Co.
519	CI73-880	Trunkline Gas Co.
523	CI74-87	Michigan Wisconsin Pipeline Co.
525	CI74-165	Panhandle Eastern Pipe Line.
526	CI74-121	Cities Service Gas Co.
528	CI74-679	Michigan Wisconsin Pipeline Co.
529	CI65-1243	Northwest Pipeline Corp.
530	CI75-20	United Gas Pipe Line Co.
531	CI75-202	El Paso Natural Gas Co.
532	CI75-353	Transcontinental Gas Pipeline Co.
533	CI75-199	United Gas Pipe Line Co.
534	CI75-354	United Gas Pipe Line Co.
535	CI75-339	Transcontinental Gas Pipeline Co.
536	CI75-427	Texas Gas Transmission Corp.
537	CI75-443	Texas Gas Transmission Corp.
538	CI75-473	Transcontinental Gas Pipeline Co.
539	CI75-476	Transcontinental Gas Pipeline Co.
540	CI75-545	Breckenridge Gasoline Co.
541	CI75-649	Mississippi River Trans. Corp.
542	CI75-745	United.
543	G-15425	West Lake Natural Gas Co.
544	CI76-169	El Paso Natural Gas Co.
545	CI76-230	El Paso Natural Gas Co.
546	CI76-294	Transwestern Pipeline Co.
547	CI75-754	Colorado Interstate Gas.
548	CI76-309	Colorado Interstate Gas.
549	CI76-310	Colorado Interstate Gas.
550	CI76-304	Natural Gas Pipeline Co.
551	CI76-362	Southern Natural Gas.
552	CI76-322	Natural Gas Pipeline Co. of America.
556	CI77-89	Arkansas Louisiana.
557	CI75-223	Michigan Wisconsin Pipeline Co.
558	CI75-235	Michigan Wisconsin Pipeline Co.
559	CI75-245	Arkansas Louisiana Gas Co.
560	CI75-247	Kansas-Nebraska Natural Gas.
561	CI75-248	Panhandle Eastern Pipeline Co.
562	CI75-249	Arkansas Louisiana Gas Co.
563	CI75-250	Natural Gas Pipeline Co. of America.
564	CI75-254	Arkansas Louisiana Gas Co.
565	CI75-255	Northern Natural Gas Co.
566	CI75-265	Northern Natural Gas Co.
567	CI75-266	Arkansas Louisiana Gas Co.
568	CI75-287	Colorado Interstate Gas.
569	CI75-268	Cities Service Gas Co.
570	CI75-269	Northern Natural Gas Co.
571	CI75-324	Arkansas Louisiana Gas Co.
572	CI75-329	Transwestern Pipeline Co.
574	CI75-382	Michigan Wisconsin Pipeline Co.
575	CI75-417	Mountain Fuel Supply.
576	CI75-424	Western Transmission.
578	CI75-497	Michigan Wisconsin Pipeline Co.
579	CI75-627	Arkansas Louisiana.
580	CI76-233	Michigan Wisconsin Pipeline Co.
581	CI77-204	Transcontinental Gas Pipeline Co.
582	CI77-243	Panhandle Eastern.
583	CI77-75	Texas Eastern Transmission Corp.
587	CI77-436	Trunkline Gas Co.

Sun Oil Company (Delaware) Rate Schedule No.	Certificate Docket	Purchaser
588	CI77-587	Transco Gas Supply Co.
590	CI77-644	El Paso Natural Gas Co.
591	CI77-715	Transcontinental Gas P/L.
592	CI77-751	Florida Gas Transmission.
593	CI77-769	United Gas Pipe Line Co.
594	CI77-815	El Paso Natural Gas Co.
596	CI78-28	Southern Natural Gas Co.
597	CI78-149	Transcontinental.
598	CI78-214	Montana-Dakota Utilities Co.
599	CI76-230	Colorado Interstate Gas.
600	CI78-416	El Paso Natural Gas Co.

Rate schedule No.	Certificate Docket	Purchaser
601	CI78-508	Michigan Wisconsin P/L.
602	CI78-539	Trunkline Gas Co.
603	CI78-683	Transcontinental Gas P/L.
604	CI78-573	El Paso Natural Gas.
605	CI78-655	Northwest Pipeline.
606	CI78-896	Alabama-Tennessee Natural Gas.
608	CI78-1182	Arkansas Louisiana Gas.
609	CI78-1214	Cities Service Gas.
610	CI79-55	El Paso Natural Gas.
611	CI79-83	Transco Gas Supply.
612	CI79-79	Cities Service Gas.
613	CI78-892	El Paso Natural Gas.
615	CI79-27	Cities Service Gas.
616	CI78-1203	Colorado Interstate Gas.
617	CI80-6	Texas Eastern Transmission.
618	CI80-102	Michigan Wisconsin P/L.
619	CI80-108	Northwest Pipeline.
620	CI80-72	El Paso Natural Gas.
621	CI78-1026	Arkansas Louisiana Gas.
622	G-12398	Columbia Gas Transmission.
623	CI60-506	Tennessee Gas Transmission.
624	CI61-1412	Transcontinental Gas P/L.
625	CI61-1412	Tennessee Gas Transmission.
626	CI61-1412	Tennessee Gas Transmission.
627	CI62-1251	Arkansas Louisiana Gas.
628	G-5991	El Paso Natural Gas.
629	G-5183	El Paso Natural Gas.
630	G-5991	El Paso Natural Gas.
631	G-5991	El Paso Natural Gas.
632	G-9261	El Paso Natural Gas.
633	G-10155	Northern Natural Gas.
634	G-10257	El Paso Natural Gas.
635	G-12186	El Paso Natural Gas.
636	G-14335	West Texas Gathering.
637	G-14407	El Paso Natural Gas.
638	G-14649	El Paso Natural Gas.
639	G-14848	El Paso Natural Gas.
639	G-18637	El Paso Natural Gas.
640	G-15296	Northwest Pipeline.
641	G-16911	Cimarron Transmission.
642	G-17385	El Paso Natural Gas.
642	G-18659	El Paso Natural Gas.
642	G-19959	El Paso Natural Gas.
643	G-18507	Natural Gas Pipeline of America.
644	G-18549	Northern Natural Gas.
645	G-18303	El Paso Natural Gas.
646	G-18449	El Paso Natural Gas.
647	G-19545	Phillips Petroleum.
648	CI60-278	Phillips Petroleum.
649	CI60-774	Phillips Petroleum.
650	CI60-780	Phillips Petroleum.
651	CI61-1064	Phillips Petroleum.
652	CI61-1079	Phillips Petroleum.
653	CI61-1425	El Paso Natural Gas.
654	CI61-1425	El Paso Natural Gas.
655	CI61-1425	El Paso Natural Gas.
656	CI61-1425	El Paso Natural Gas.
657	CI61-1425	El Paso Natural Gas.
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663	CI61-1425	El Paso Natural Gas.
664	CI61-1425	El Paso Natural Gas.
665	CI61-1429	El Paso Natural Gas.
666	CI61-1429	El Paso Natural Gas.
667	CI61-1429	El Paso Natural Gas.
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672	CI61-1429	El Paso Natural Gas.
673	CI61-1429	El Paso Natural Gas.
674	CI61-1429	El Paso Natural Gas.
675	CI61-1429	El Paso Natural Gas.
676	CI61-1429	Texas Eastern Transmission.
677	CI61-1429	El Paso Natural Gas.
678	CI61-1582	El Paso Natural Gas.
679	CI61-1649	Phillips Petroleum.
680	CI62-3	El Paso Natural Gas.
681	CI62-438	El Paso Natural Gas.
682	CI62-742	Northern Natural Gas.
683	CI61-996	Michigan Wisconsin P/L.
684	CI62-852	Lone Star Gas.
685	CI62-1234	Phillips Petroleum.
686	CI62-1237	El Paso Natural Gas.
687	CI62-1344	El Paso Natural Gas.
688	CI63-469	Southern Natural Gas.
689	CI63-1351	El Paso Natural Gas.
690	CI63-1573	Phillips Petroleum.
691	CI64-302	Phillips Petroleum.
692	CI64-1547	Kansas Nebraska Natural Gas.
693	CI64-1554	Kansas Nebraska Natural Gas.
694	CI65-223	Northwest Pipeline.
695	CI65-490	El Paso Natural Gas.
696	CI65-1196	Michigan Wisconsin Pipe Line.
697	CI65-558	Natural Gas P/L Co. of America.
698	CI66-103	Transwestern P/L.
699	CI66-129	El Paso Natural Gas.
700	CI66-1215	Natural Gas P/L Co. of America.
701	CI67-822	Southern Union Gathering.
702	CI68-509	Arkansas Louisiana Gas.
703	CI68-800	Natural Gas P/L Co. of America.
704	CI68-1280	Transwestern Pipeline.
705	CI70-506	Arkansas Louisiana Gas.
706	CI71-262	Tennessee Gas P/L.
707	CI71-888	Transcontinental Gas P/L.
708	CI72-163	El Paso Natural Gas.
709	CI72-176	Northern Natural Gas.
710	CI72-290	Southern Natural Gas.
711	CI72-555	Panhandle Eastern Pipeline.
712	CI72-556	Kansas Nebraska Natural Gas.
714	CI72-626	Northern Natural Gas.
715	CI72-628	Northern Natural Gas.
716	CI73-55	Arkansas Louisiana Gas.
717	CI73-65	Tennessee Gas P/L.
718	CI73-359	Florida Gas Transmission.
719	CI73-427	Northern Natural Gas.
720	CI73-443	Northern Natural Gas.
721	CI66-129	Northwest P/L.
722	CI75-652	Northern Natural Gas.
723	CI76-221	El Paso Natural Gas.
724	CI76-267	Transwestern P/L.
725	CI76-677	El Paso Natural Gas.
726	CI77-114	El Paso Natural Gas.
727	CI77-134	Kansas Nebraska Natural Gas.
728	CI77-126	El Paso Natural Gas.
729	CI77-4	El Paso Natural Gas.
730	CI77-230	Texas Gas Transmission.
731	CI77-446	Trunkline Gas.
732	CI76-236	Transwestern P/L.
733	CI78-739	El Paso Natural Gas.
734	CI79-535	El Paso Natural Gas.
735	CI78-826	El Paso Natural Gas.
736	CI78-850	Michigan Wisconsin P/L.
737	CI78-1213	El Paso Natural Gas.
738	CI80-258	Trunkline Gas.
739	CI80-466	Michigan Wisconsin P/L.
740	CI81-224-000	Trunkline Gas.
741	CI81-266-000	Tennessee Gas P/L.
742	CI81-489-000	Locust Ridge Gas Co.
743	CI81-223-000	Trunkline Gas Co.
745	CI73-142	Tennessee Gas Pipeline Co.
746	CI82-36-000	Trunkline Gas Co.
747	CI82-135-000	Texas Eastern Transmission.
607 [1]	CI78-1009	Trunkline Gas Co.
744 [1]	CI79-410	Trunkline Gas Co.
([1])	CI80-252	Trunkline Gas Co.

[1] Optional procedure.

[FR Doc. 83-10302 Filed 4-18-83; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A-2-FRL 2349-3]

Air Programs; Delegation of Prevention of Significant Deterioration; Authority to the State of New Jersey

AGENCY: Environmental Protection Agency.

ACTION: Notice of delegation of authority.

SUMMARY: The Environmental Protection Agency (EPA) is today delegating its authority for prevention of significant deterioration review (pursuant to Title 40, Code of Federal Regulations, Part 52, § 52.21) to the State of New Jersey Department of Environmental Protection (NJDEP). Effective immediately, NJDEP will receive and process all PSD applications.

EFFECTIVE DATE: April 19, 1983.

ADDRESSES: Copies of the State's delegation request, correspondence between the State and EPA, and EPA's delegation agreement are available for public inspection during normal business hours at: Environmental Protection Agency, Region II Office, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278; New Jersey Department of Environmental Protection, Labor and Industry Building, Room 1110, John Fitch Plaza, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION: On September 30, 1982 the New Jersey Department of Environmental Protection (NJDEP) submitted a request to the Environmental Protection Agency (EPA) for delegation of technical and administrative review responsibilities resulting from prevention of significant deterioration (PSD) permitting requirements promulgated at 40 CFR 52.21. Based on its review of this request and other information, EPA has determined that the State is capable of receiving delegation of this program. However, it should be noted that, because of a question regarding New Jersey's authority to enforce federal PSD increments, applications from those

sources whose approval would result in an exceedance of any applicable PSD ambient air increment [as defined at 40 CFR 52.21(c)] will be provided by NJDEP to EPA for review and permit action. EPA will remove this condition to the delegation at such time as the NJDEP can demonstrate to EPA's satisfaction that it has the legal authority to deny an application on the gounds that issuance of a PSD permit would result in an exceedance of any applicable PSD ambient air increment.

Therefore, effective immediately, full PSD review authority, with the condition noted, is delegated to NJDEP. Additional conditions and the terms of this delegation are delineated in a December 10, 1982 letter from the Region II Administrator to the Commissioner of NJDEP.

Effective immediately, all applications and other information required by 40 CFR 52.21 from sources in the State of New Jersey should be submitted to the NJDEP at the following address: Supervisor, New Source Review, New Jersey Department of Environmental Protection, Bureau of Engineering and Technology, Division of Environmental Quality, CN 027, Trenton, New Jersey 08625.

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

(Secs. 101, 165, and 301, Clean Air Act, as amended (42 U.S.C. 7401, 7465, and 7601))

Jacqueline E. Schafer,

Regional Administrator, Environmental Protection Agency.

April 5, 1983.

[FR Doc. 83-10354 Filed 4-18-83; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51433A; BH-FRL 2349-6]

Toxic Substances; Certain Chemicals; Premanufacture Notices; Extension of Review Periods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review period for an additional 90 days for premanufacture notices (PMN's) 82-678 and 82-679, under the authority of section 5(c) of the Toxic Substances Control Act (TSCA). The review period will now expire on July 11, 1983 and July 14, 1983, respectively. The PMN substances will be used as pigments for coatings.

FOR FURTHER INFORMATION CONTACT: June Thompson, Chemical Control Division (TS-794), Environmental Protection Agency, Rm. E-201, 401 M St, SW., Washington, D.C. 20460, (202-382-3737).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a PMN to EPA 90 days before manufacture or import begins. Under section 5(c) EPA may, for good cause, extend the notice period for additional periods, not to exceed a total of 180 days from the date of receipt.

On September 17, 1982, EPA received PMN 82-678 for a chlorinated aromatic azo anthraquinone pigment. On September 20, 1982, EPA received PMN 82-679 for a chlorinated aromatic azo pigment. Both substances are to be imported into the United States. The company stated that the substances would be used as pigments for coatings. The submitter claimed its identity and the specific chemical indentity to be confidential business information. Notice of receipt of the PMN's was published in the **Federal Register** of September 30, 1982 (47 FR 43160). The original 90-day review periods were scheduled to expire on December 15 and 18, 1982. However, the submitter voluntarily suspended the review periods to April 12 and April 15, 1983.

EPA's detailed analysis of the substances described in PMN's 82-678 and 82-679 addressed the following: effects on human health, metabolism, human exposure, degree of risk relative to available commercial substitutes, potential marketability, and the identification of other information which may be required to resolve outstanding issues.

As a result of this analysis, EPA has reason to believe the following:

1. Human exposure to the azo reduction products of the PMN substances may result in carcinogenicity, sensitization, and blood disorders.

2. Workers may be exposed to the PMN substances during formulation and application.

Based on this analysis, EPA finds that there is a possibility that the substances submitted for review in PMN's 82-678 and 82-679 may be regulated under section 5(e) of TSCA. The Agency requires an extension of the review period to further investigate potential health effects and use conditions, to examine its regulatory options and to prepare the necessary documents should regulatory action be required. An administrative order under section 5(e) must be issued no later than 45 days prior to expiration of the review period. Therefore, EPA has determined that good cause exists to extend the review period for an additional 90 days, to July 11, 1983 and July 14, 1983, respectively.

PMN's 82-678 and 82-679 are available for public inspection in Rm. E-107, at the EPA Headquarters, address given above, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

Dated: April 11, 1983.

Don R. Clay,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 83-10350 Filed 4-18-83; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51450B; BH-FRI 2349-5]

Toxic Substances; Premanufacture Notice; Extension of Review Period; ((Substituted Heterocycle) AZO) Substituted Aniline, Acid Salts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is entending the review period for an additional 90 days for premanufacture notice (PMN) PMN 83-389, under the authority of section 5(c) of the Toxic Substances Control Act (TSCA). The review period will now expire on July 11, 1983.

FOR FURTHER INFORMATION CONTACT: Rose Allison, Chemical Control Division (TS-794), Environmental Protection Agency, Rm. E-201, 401 M. St., SW., Washington, D.C. 20460, (202-382-3735).

SUPPLEMENTARY INFORMATION: Under section 5 of TSCA, anyone who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a PMN to EPA 90 days before manufacture or import begins. Under section 5(c) EPA may, for good cause, extend the notice period for additional periods, not to exceed a total of 180 days from the date of receipt.

On January 13, 1982, EPA received PMN 83-389. The PMN substance will be imported to the United States for use as a textile colorant. The submitter of the PMN claimed its identity, the specific chemical identity, and the import volume to be confidential business information. Notice of receipt of the PMN was published in the **Federal Register** of January 24, 1983 (48 FR 3045). The original 90-day review period is scheduled to expire on April 12, 1983.

EPA's detailed analysis of the substance described in the PMN addressed the following: chemical analysis of the PMN substance, effects

on human health, human exposure, production volume, degree of risk relative to available commercial substitutes, potential marketability, and the indentification of other information which may be required to resolve outstanding issues.

As a result of this analysis, EPA has reason to believe the following:

1. Human exposure to the PMN substance may result in adverse health effects, among which may be teratogenicity.

2. During processing and use of the PMN substance, the potential exists for significant worker exposure.

Based on this analysis, EPA finds that there is a possibility that the substance submitted for review in PMN 83–389 may be regulated under section 5(e) of TSCA. The Agency requires an extension of the review period to further investigate potential health effects and use conditions, to examine its regulatory options and to prepare the necessary documents, should regulatory action be required. An administrative order under section 5(e) must be issued no later than 45 days prior to expiration of the review period. Therefore, EPA has determined that good cause exists to extend the review period for an additional 90 days, to July 11, 1983.

PMN 83–389 is available for public inspection in Rm. E–107, at the EPA Headquarters, address given above, from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

Dated: April 11, 1983.

Don R. Clay,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 83-10351 Filed 4-18-83; 8:45 am]

BILLING CODE 6560-50-M

[A-10-FRL 2349-2]

New Source Performance Standards; Subdelegation of Authority to an Oregon Local Agency

AGENCY: Environmental Protection Agency.

ACTION: Correction.

SUMMARY: EPA is correcting a letter contained in FR Doc. 83–5141 concerning a subdelegation of authority for new source performance standards for an Oregon local agency.

FOR FURTHER INFORMATION CONTACT: Mark H. Hooper, (206) 442–1949.

At 47 FR 8571 in the issue dated Tuesday, March 1, 1983 the following corrections are to be made in the third paragraph of the February 10, 1983 letter:

(1) "Sources located in the State" should read "sources located in Lane County."

(2) "However" should be deleted in the second sentence.

(3) "State agency only" should read "to Lane Regional Air Pollution Authority."

Dated: April 7, 1983.

L. E. Coate,

Acting Regional Administrator.

[FR Doc. 83-10280 Filed 4-18-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

National Industry Advisory Committee, Common Carrier Communications Subcommittee; Meeting

Pursuant to the provisions of Pub. L. 92–463, announcement is made of a public meeting of the Common Carrier Communications Subcommittee of the National Industry Advisory Committee (NIAC) to be held Thursday, May 5, 1983. The Subcommittee will meet in the Federal Communications Commission's Training Room 330 in the "Brown Building" at 1200 19th Street, NW., Washington, D.C. at 9:30 a.m.

Purpose: To consider emergency communications matters.

Agenda: As follows:

1. Opening remarks by Chairman,
2. Reports by members on issues assigned at the April 19, 1983 meeting and consideration of these issues, as follows:

- Compensation for the carriers who man the National Coordinating Mechanism (NCM).
- Compensation for the carriers who provide special assistance during emergencies.
- Types of authority required for the NCM to operate.
- Administrative support of the NCM.
- Approval of NCM plans, standards or policies.
- Possible requirement for NIAC joint committee on funding.
- Other issues.

3. Other business.
4. Adjournment.

Any member of the public may attend or file a written statement with the Committee either before or after the meeting. Any member of the public wishing to make an oral statement must consult with the Committee prior to the meeting. Those desiring more specific information about the meeting may telephone the NIAC Executive Secretary in the FCC Emergency Communications Division at (202) 634–1549.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-10406 Filed 4-18-83; 8:45 am]

BILLING CODE 6712-01-M

[Joint Board in CC Docket No. 80–286]

Jurisdictional Separations Proceeding To Hold Meeting

April 8, 1983.

The Federal-State Joint Board in CC Docket No. 80–286, *Amendment of Part 67 of the Commission's Rules*, also known as the *Jurisdictional Separations Proceeding*, will meet April 15, 1983, at 9:30 a.m. in Room 856, 1919 M Street NW., Washington, D.C. The Joint Board will discuss methods for allocating non-traffic sensitive (NTS) local exchange plant between the intrastate and interstate jurisdictions as well as a number of other issues concerning the allocation of local exchange plant which remain to be resolved in this proceeding. If you have any questions concerning this matter, please call Claudia Pabo at (202) 632–9342.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-10049 Filed 4-18-83; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 2241]

Summit Forwarding Corp.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Summit Forwarding Corp., 5959 Westheimer, Suite 203A, Houston, TX 77057 was cancelled effective April 8, 1983.

By letter dated March 11, 1983, Summit Forwarding Corp., was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 2241 would be automatically revoked unless a valid surety bond was filed with the Commission.

Summit Forwarding Corp., has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual or Orders, Commission Order No. 1 (Revised), § 10.01(f) dated November 12, 1981;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 2241 be and is hereby revoked effective April 6, 1983.

It is ordered, that Independent Ocean Freight Forwarder License No. 2241 issued to Summit Forwarding Corp., be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the Federal Register and served upon Summit Forwarding Corp.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing

[FR Doc. 83-10345 Filed 4-18-83; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1731]

TAF Delivery Systems, Inc.; Order of Revocation

On April 11, 1983, TAF Delivery Systems, Inc., Route 17, Hasbrouck Heights, NJ 07604 surrendered its Independent Ocean Freight Forwarder License No. 1731 for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 1731 issued to TAF Delivery Systems, Inc., be revoked effective April 11, 1983, without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this Order be published in the Federal Register and served upon TAF Delivery Systems, Inc.

Albert J. Klingel, Jr.,

Director, Bureau of Certification and Licensing.

[FR Doc. 83-10346 Filed 4-18-83; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 83-22; Agreement No. 10461]

Equal Access Agreement in the United States/Republic of the Philippines Ocean Liner Trade; Order of Investigation and Hearing

Agreement No. 10461 (Agreement), between Galleon Shipping Corp. and Maritime Co. of the Philippines (Philippine-flag carriers) and American President Lines, Ltd., Lykes Bros. Steamship Co., Inc., Sea-Land Service, Inc. and Waterman Steamship Corporation (U.S.-flag carriers), has been filed for approval pursuant to section 15 of the Shipping Act, 1916 (46 U.S.C. 814).

The Agreement provides that the parties shall have free and equal access to the total import and export cargo available in the ocean liner trade between the United States of America and the Republic of the Philippines (the trade). Each national-flag group promises to exercise its best efforts in representations to its respective government to secure for the other group the benefits of its government's regulations concerning the reservation of cargo to its nation's merchant marine. The Agreement further provides that the parties will become "associate compaines" and that they will seek their respective government's approval of the Agreement so that each party can participate under equal conditions in the exchange of traffic in the trade. Associate company status for Philippine-flag carriers in the United States and for U.S.-flag carriers in the Republic of the Philippines (R.O.P.) is subject to the fulfilling of this requirement in both countries. Additional authorized R.O.P.-flag carriers and additional U.S.-flag carriers entering the trade may participate in the Agreement. The Agreement proposes an unlimited term and any party may terminate participation in the Agreement upon 30 days' notice.

Notice of filing was published in the Federal Register (47 FR 52768–52769, November 23, 1982). The government of the Republic of the Philippines filed a statement in support of the Agreement.[1] Protests were timely filed by foreign governments,[2] by third-flag carriers in the trade,[3] by a shipowners' association,[4] by individual shippers,[5] and by shippers' associations and other import and export interests.[6] A number of other protests were received after the period for comment.[7] Proponents submitted a reply to the protests. The United States government filed a statement clarifying United States' policy regarding access to U.S. trades.[8]

Proponents contend that the Agreement will: (1) harmonize the respective cargo reservation laws and policies of the United States and the Republic of the Philippines; (2) enable the parties to secure equal access to both governments' controlled cargoes; (3) avoid curtailment of U.S.-flag service and other trade disruptions; (4) provide shippers with additional service options and improved liner services; (5) advance the formal policy objectives of United States' statutes to eliminate discrimination against U.S.-flag vessels, strengthen the U.S.-flag merchant marine, and permit reciprocal treatment to vessels of the trading partner; and (6) promote the development of Philippine-flag carriers. Proponents further assert that the Agreement: (1) does not conflict with federal antitrust laws; (2) does not authorize cargo sharing or pooling activities or coordination of sailings or cargo bookings; (3) does not authorize collective conduct to implement Philippine cargo reservation laws or regulations; (4) does not divide the trade or limit or exclude third-flag carrier participation; (5) does not unjustly discriminate against third-flag carriers, shippers, receivers or ports; (6) has no bearing on conference structures, freight services or pricing; (7) preserves competitive freight service and pricing; (8) represents a commercial resolution of the problem of availability of controlled cargo; and (9) has been shown to be

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[1] Late-filed comments supporting approval of the Agreement were received from the Maritime Institute for Research and Industrial Development and from the Joint Maritime Congress.

[2] The Norwegian government filed a protest through the Royal Norwegian Embassy. Representatives of the British and Norwegian governments filed an Aide Memoire in opposition to the Agreement through the U.S. State Department. The document represents the views of the Consultative Shipping Group, a group composed of representatives of the governments of Belgium, Denmark, Finland, France, West Germany, Greece, Italy, Japan, the Netherlands, Norway, Spain, Sweden and the United Kingdom.

[3] Third-flag operators in the trade filing protests are: A. P. Moller-Maersk Line, Barber Blue Sea Lines and a group of Japanese lines consisting of Japan Line, Ltd., Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, Showa Line, Ltd., and Yamashita-Shinnihon Steamship Co., Ltd.

[4] The Council of European & Japanese National Shipowners' Associations.

[5] Individual shippers filing protests are: Diamond Shamrock Corporation, K Mart Corporation, PPG Industries, Inc., and Hampco Apparel, Inc.

[6] Shipper groups filing protests are: American Association of Exporters and Importers, Volume Footwear Retailers of America, National Industrial Transportation League, and Chemical Manufacturers Association.

[7] Late-filed protests were received from: Oregon Commodities Co., FMC Corporation, Anitox Corporation, Washington Fish and Oyster Co. of California, Westinghouse Electric Corporation, Mark Ross & Co. International, The Gates Rubber Company, National Supply Company, Philips Roxane, Inc., Ford Motor Company, National Customs Brokers & Forwarders Association of America, Inc., and D. V. Arguimbau & Co., Inc. These persons are not designated as Protestants in this proceeding.

[8] The joint statement of the United States was filed on behalf of the Departments of Transportation, Commerce, State, Justice and the U.S. Trade Representative.

required by a serious transportation need, necessary to serve important public benefits and in furtherance of a valid regulatory purpose.[9]

Protestants allege that the Agreement will: (1) implement or facilitate the implementation of Philippine cargo reservation laws in a manner contrary to the U.S. trade policy; (2) exclude third-flag carriers from the trade; (3) unjustly discriminate against third-flag carriers; (4) inaugurate a cargo sharing or market allocation arrangement; (5) reduce service options available to shippers; (6) result in increased freight rates and higher shipping costs; (7) lead to deterioration in the quality of service to shippers; and (8) adversely affect U.S. exporters and make them less competitive in world markets. Protestants also contend that disapproval of the Agreement will not disrupt the trade or cause U.S.-flag carriers to suffer cargo or revenue losses. They further maintain that the terms of the Agremeent are vague, that the factual information provided is insufficient to assess the Agreement's impact, and that Proponents have failed to show that the Agreement is required by a serious transportation need, necessary to secure important public benefits or is otherwise in furtherance of a valid regulatory purpose. Finally, Protestants contend that the Agreement is not a commercial arrangement between the parties, but is one imposed on the signatories via governmental directions to the Philippine-flag lines.

The documents and other information submitted by Proponents, Protestants, and other Commentators reveal several areas in which material facts are in dispute or in which the information provided is either not vertified or is not sufficiently complete to reach a fully informed decision regarding the Agreement.[10] Accordingly, the Commission believes that an investigation and hearing should be instituted to resolve the following factual and legal issues and to determine whether this Agreement should be approved, disapproved or modified.

The ultimate question in this proceeding is whether Agreement No. 10461 meets the approval standards of sections 15. Included within that determination is the question of whether the Agreement is subject to the *Svenska* doctrine,[11] and, if so, whether it meets the *Svensak* requirements. "Equal Access" agreements can contemplate a number of different types of activities and effects. Mere petitioning of the respective governments of the parties will not ordinarily have a significant effect on trade conditions. On the other hand, an agreement which has the effect of limiting to a few carriers access to large blocks of reserved cargo may have a profound impact on competition within a trade. It is the assessment of competitive impact of any agreement which identifies its relationship to *Svenska* requirements. The Commission has held that "[w]here agreements are strongly protested, as here, we must examine not only the terms of an agreement, but also the competitive consequences which may be expected to flow from the agreement and other facts which show the objectives and results of the agreements." *Agreement No. T–4; Terminal Lease Agreement, Long Beach California*, 8 F.M.C. 521, 529 (1965). The following specific issues are relevant to a consideration of the applicability of *Svenska* as well as approval under section 15.

First, additional information is needed regarding the specific terms and likely impact of Philippine cargo reservation laws. Although these laws have received extensive publicity and although both Proponents and Protestants frequently refer to them,[12] the actual texts of these laws and regulations have not been made part of this record. These documents are necessary for an understanding of the specific terms and provisions of the Philippine cargo reservation system. In addition, factual issues concerning the interpretation, interrelationship, implementation, and impact of these laws remain in dispute and cannot be satisfactorily resolved on the present record. As one example, additional information is needed to determine: (1) how the Philippine waiver system operates; (2) how Central Bank regulations concerning letters of credit relate to the waiver system; and (3) how waiver rules are applied to U.S.-flag and third-flag carriers.

Second, the nature of Agreement No. 10461, its relationship to Philippine cargo reservation laws, and the probable impact of this Agreement on the trade are in dispute. Specific factual issues include: (1) whether the language of this Agreement accurately reflects the complete understanding of the parties as to all actions to be taken pursuant to the Agreement; (2) the impact of the Agreement on participation of third-flag lines in the carriage of cargo in this trade; (3) the impact of this Agreement on service to shippers; (4) the impact on U.S.-flag carriers of disapproval of this Agreement; and (5) whether the Agreement is technically sufficient, *i.e.*, are its terms clear and definite.

Third, additional information is needed in order to form a complete picture of the trade between the United States and the Republic of the Philippines and to resolve the dispute over the impact of this Agreement on third-flag carriers and service to shippers.[13] This information should include: (1) the market shares and available capacity of U.S.-flag, Philippine-flag, and third-flag carriers presently serving the trade; (2) a description of the kind and frequency of service presently offered by these carriers including vessel type, ports served, and number of sailings; and (3) the kind and volume of commodities moving in the trade and the indentification and quantification of that cargo subject to U.S. and Philippine cargo reservation laws.

Fourth, the issue has been raised as to whether Agreement No. 10461 is consistent with U.S. trade policy. In addition, the current status of consultations between the U.S. and R.O.P. regarding shipping relations between the two countries has also been raised. The impact of these factors on the approvability of the Agreement is difficult to assess at this juncture. Past Commission actions on equal access agreements have at times included

[9] The government of the Republic of the Philippines states that the Agreement will promote the development of the Philippine-flag merchant marine, will promote trade between the United States and the Philippines, will maintain reliable liner services, and will preserve intergovernmental harmony.

[10] The Commission is required to conduct an appropriate hearing where an agreement with anticompetitive potential presents disputed issues of material fact. *Marine Space Enclosures, Inc. v. Federal Maritime Commission*, 420 F.2d 577, 586–87 (D.C. Cir. 1969). Moreover, adequate consideration must be given to the antitrust implications of an agreement which presents the potential to unduly restrain competition. *U.S. Lines v. Federal Maritime Commission*, 584 F.2d 519, 531 (D.C. Cir. 1978).

[11] The *Svenska* doctrine is the proposition affirmed in *Federal Maritime Commission v. Aktiebolaget Svenska Amerika Linien*, 390 U.S. 238 (1968), whereby section 15 agreements which interfere with the policies of the antitrust laws will be disapproved as "contrary to the public interest" unless justified by evidence establishing that the agreement, if approved, will meet a serious transportation need, secure an important public benefit or further a valid regulatory purpose of the Shipping Act, 1916. The burden is on proponents of such agreements to come forward with the necessary evidence.

[12] The laws and decrees referred to in the record before the Commission include Presidential Decree No. 1466, Executive Order No. 769, and Memorandum Order No. 3. In addition, there may be other interstitial decrees or regulations not mentioned by the Proponents or Protestants which would be relevant to the consideration of this Agreement.

[13] Several Protestants have submitted factual data concerning the trade. This information, however, is not always verified or complete.

analysis of the diplomatic environment between the United States and the trading partner. Moreover, the cargo reservation policies which are said to have given rise to this Agreement may be the subject of the upcoming discussions. A resulting change in Philippine cargo reservation policy may affect analysis of transportation need. These matters require clarification.

Therefore, it is ordered, That pursuant to sections 15 and 22 of the Shipping Act, 1916 (46 U.S.C. 814 and 821), an investigation and hearing is instituted to determine whether Agreement No. 10461 should be approved, disapproved or modified. This investigation will address any material factual and legal issues including those discussed above; and

It is further ordered, That the parties listed in Appendix A attached hereto are hereby made Proponents in this proceeding; and

It is further ordered, That the parties listed in Appendix B attached hereto are hereby made Protestants in this proceeding; and

It is further ordered, That in accordance with the Commission's Rules (46 CFR 502.42) the Bureau of Hearing Counsel is hereby made a party to this proceeding; and

It is further ordered, That this matter is assigned for hearing and decision to the Commission's Office of Administrative Law Judges, with a public hearing to be held at a date and place hereafter determined by the Presiding Administrative Law Judge but in no event later than the time limitation set forth in Rule 61 (46 CFR 502.61). This hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that oral hearing and cross-examination are necessary to develop an adequate record; and

It is further ordered, That persons other than those named herein having an appropriate interest and desire to participate in this proceeding may petition for leave to intervene pursuant to section 502.72 of the Commission's Rules (46 CFR 502.72); and

It is further ordered, That this order be published in the **Federal Register** and a copy served upon all parties of record; and

It is further ordered, That all future notices, orders, or decisions issued in this proceeding, including notice of the time and place of hearing or prehearing conference, be mailed directly to all parties of record; and

It is further ordered, That all documents submitted by any party of record in this proceeding shall be filed in accordance with Rule 118 of the Commission's Rules (46 CFR 502.118), as well as being mailed directly to all parties of record. By the Commission.

Francis C. Hurney,

Secretary.

Appendix A

Galleon Shipping Corp.
Maritime Co. of the Philippines
American President Lines, Ltd.
Lykes Bros. Steamship Co., Inc.
Sea-Land Service, Inc.
Waterman Steamship Corporation

Appendix B

The Government of Norway
The Consultative Shipping Group
A. P. Moller-Maersk Line
Barber Blue Sea Lines
Japan Line, Ltd., *et al.*
The Council of European & Japanese National Shipowners' Associations
Diamond Shamrock Corporation
K Mart Corporation
PPG Industries, Inc.
Hampco Apparel, Inc.
American Association of Exporters and Importers
Volume Footwear Retailers of America
National Industrial Transportation League
Chemical Manufacturers Association

[FR Doc. 83-10048 Filed 4-18-83; 8:45 am]

BILLING CODE 6730-01-M

Independent Ocean Freight Forwarder License Applicants; Airmobil Freight Corp. et al.

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commisison, Washington, D.C. 20573.

Airmobil Freight Corporation
9864 W. Leland Avenue, Schiller Park, IL 60176
Officers:
Arlene M. Williams, President/Director
Michael R. Sobie, Director/Vice President
H. Anthony Saida, Vice President
Frank Ricci, Director/Secretary/Treasurer

Ssangyong Shipping (America) Ltd.
51 Jemes Street, South Hackensack, NJ 07606
Officers:
Doo Ha Park, President/Director
Myung Sung Kim, Executive Vice President/Director
Stephen A. Geiger, Secretary

Marathon Shipping, Inc.
6301 Quad Avenue, Baltimore, MD 21205
Officers:
John Browning Rockwell, President/Director
Susan L. Farris, Operations Manager

Gregorio R. Francisco dba Eximco Air-Sea Co.
411 Manila Avenue, Jersey City, NJ 07302

Eastern Forwarding International, Inc.
7C Terminal Way, Avenel, NJ 07001
Officers:
Jay L. Goldberg, President
Anna M. Goldberg, Secretary/Treasurer

By the Federal Maritime Commisison.

Dated: April 14, 1983.

Francis C. Hurney,

Secretary.

[FR Doc. 83-10047 Filed 4-18-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Companies; Union National Corp., et al.

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that applicaton. 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 Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Union National Corporation,* Mt. Lebanon, Pennsylvania; to acquire 100 percent of the voting shares or assets of The McDowell National Bank of Sharon, Sharon, Pennsylvania. Comments on this application must be received not later than May 11, 1983.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Union Illinois Company,* East St. Louis, Illinois; to acquire 84 percent of the voting shares or assets of The State Bank of Jerseyville, Jerseyville, Illinois.

Comments on this application must be received not later than May 12, 1983.

Board of Governors of the Federal Reserve System, April 12, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-10285 Filed 4-18-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies; Gold Coast Bancshares, 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, N.W., Atlanta, Georgia 30303:

1. *Gold Coast Bancshares, Inc.*, Hypoluxo, Florida; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of South Palm Beaches, Hypoluxo, Florida. Comments on this application must be received not later than May 12, 1983.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Marshall Bancshares, Inc.*, Marshall, Oklahoma; to become a bank holding company by acquiring 80 percent or more of the voting shares of Bank of Marshall, Marshall, Oklahoma. Comments on this application must be received not later than May 12, 1983.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *Walz-Stuart Agency, Inc.*, St. Paul, Minnesota; to become a bank holding company by acquiring 70.6 percent of the voting shares of First Sierra National Bank, Truth or Consequences, New Mexico. Comments on this application must be received not later than May 12, 1983.

D. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary), Washington, D.C. 20551:

1. *Northwest Suburban Bancorp, Inc.*, Mount Prospect, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Mount Prospect, Mount Prospect, Illinois; Countryside Bank, Mount Prospect, Illinois and First National Bank of Lake Zurich, Lake Zurich, Illinois. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago. Comments on this application must be received not later than May 12, 1983.

Board of Governors of the Federal Reserve System, April 12, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-10284 Filed 4-18-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities; Citicorp, 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 New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York (finance company activities; Texas): To expand the activities of an existing office of its subsidiary, Citicorp Acceptance Company, Inc., to include the proposed *de novo* activity of: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes. Such activity would be conducted from an office in San Antonio, Texas serving the entire State of Texas. Comments on this application must be received not later than May 11, 1983.

2. *Citicorp*, New York, New York (finance company activities; Texas): To expand the activities of an existing office of its subsidiary, Citicorp Acceptance Company, Inc., to include the proposed *de novo* activity of: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes. Such activity would be conducted from an office in Houston, Texas serving the entire State of Texas. Comments on this application must be received not later than May 11, 1983.

3. *Citicorp*, New York, New York (consumer finance and credit-related insurance activities; Florida): To establish a *de novo* office of Citicorp Homeowners, Inc. and a *de novo* office of Citicorp Person-to-Person Financial Center of Florida, Inc. at a shared location in Boca Raton, Florida. The activities in which the *de novo* office of Citicorp Homeowners, Inc. and the *de novo* office of Citicorp Person-to-Person Financial center of Florida, Inc. propose to engage are: the making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health insurance by licensed agents or brokers, as required; the sale of consumer oriented financial management courses; the servicing, for any person, of loans and other extensions of credit; the making, acquiring, and servicing, for its own account and for the account of others, of extensions of credit to individuals secured by liens on residential or non-residential real estate; and the sale of mortgage life and mortgage disability

insurance directly related to extensions of mortgage loans. The proposed insurance activities are permissible pursuant to section 601[A] of the Garn-St Germain Act of 1983 (12 U.S.C. 1843(c)(8)(A)). The proposed service area for the *de novo* office of Citicorp Homeowners, Inc. and the *de novo* office of Citicorp Person-to-Person Financial Center of Florida, Inc. shall be comprised of the entire State of Florida for all the aforementioned proposed activities. Credit-related life, accident and health insurance may be underwritten by Family Guardian Life Insurance Company, an affiliate of Citicorp Person-to-Person Financial Center of Florida, Inc. and Citicrop Homeowners, Inc. Comments on this application must be received not later than May 9, 1983.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Maryland Bancorp*, Baltimore, Maryland (retail sale of money orders and travelers checks; data processing activities; Mid-Atlantic region):"To engage, through its wholly-owned subsidiary, First Maryland Cheque Corporation in the sale at retail of money orders having a face value of not more than $1,000, the issuance and sale of travelers checks, and providing data processing and data transmission services, data base or facilities (including data processing and date transmission hardware, software, documentation, and operating personnel) for the internal operations of the holding company or its subsidiaries, all in accordance with the Board's Regulation Y. The issuance of money orders and travelers checks would be conducted by agents, including the holding company's banking subsidiaries, in offices throughout the State of Maryland and in Millsboro, Delaware, initially, and by agents in other Mid-Atlantic states in the future. The performance of data processing activities would be conducted at the offices of First Maryland Cheque Corporation in Baltimore, Maryland. Comments on this application must be received not later than May 9, 1983.

2. *Maryland National Corporation*, Baltimore, Maryland (leasing insurance and financing activities): To engage through its subsidiary, Maryland National Leasing Corporation, in the following activities; engaging generally in the business of leasing personal property (including, but not limited to, the leasing of various types of equipment, machinery, vehicles, transportation equipment, and data processing equipment and including conditional sales contracts and chattel mortgages) where the lease is the functional equivalent of an extension of credit; originating and servicing personal property leases as principal or agent; buying, selling and otherwise dealing in personal property lease contracts as principal or agent; buying, selling and otherwise dealing in personal property leasing transactions; engaging in the sale, as agent or broker, of insurance similar in form and intent to credit life and/or mortgage redemption insurance; engaging generally in the business of leasing real property where the lease is the functional equivalent of an extension of credit; originating real property leases as principal or agent; servicing real property leases for affilated or non-affiliated individuals, partnerships, corporations or other entities; buying, selling and otherwise dealing in real property leasing transactions; engaging generally in commercial lending operations including, but not limited to, secured or unsecured commercial loans and other extensions of credit to commercial enterprises; and acting as advisor or broker in commercial lending transactions. These activities would be conducted from offices in Oak Brook, Illinois. The geographic area to be served by the Oak Brook office will be the north central area of the United States in general including but not limited to the States of Illinois, Michigan, Minnesota and Wisconsin. Comments on this application must be received not later than May 9, 1983.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Wisconsin Corporation*, Milwaukee, Wisconsin (mortgage lending and credit insurance activities; Wisconsin): To engage, through its subsidiary, RE Services, Inc., in making and acquiring, for its own account or for the account of others, loans and other extensions of credit such as would be made by a mortgage company; and acting as agent for the sale of credit life and accident and health insurance directly related to its extensions of credit. These activities would be conducted from an office in Milwaukee, Wisconsin, serving the State of Wisconsin. Comments on this application must be received not later than May 5, 1983.

2. *Marshall & Ilsley Corporation*, Milwaukee, Wisconsin (commercial finance activities and providing portfolio investment advice; all 50 states): To engage, through its subsidiary, M&I Capital Corporation, in making or acquiring secured loans and other extensions of credit to or for business, governmental or other customers (excluding direct consumer lending), entities or projects; purchasing or acquiring receivables or chattel paper (including consumer receivables and paper); issuing letters of credit and accepting drafts; servicing loans and other extensions of credit; and providing portfolio investment and financial advice to any individual, firm, corporation, partnership or other entity. These activities would be conducted in all 50 states. Comments on this application must be received not later than May 4, 1983.

3. *St. Joseph Bancorporation, Inc.*, South Bend, Indiana, (mortgage activities; Indiana): To engage, through its subsidiary, St. Joseph Mortgage Co., Inc., in originating, acquiring, selling, and servicing residential, commercial and industrial mortgage loans. Such activities will be conducted from an office in Bloomington, Indiana, serving Bloomington, Indiana, and the surrounding counties, including Monroe, Morgan, Lawrence, and Jackson Counties, Indiana, but not including the Indianapolis metropolitan area. Comments on this application must be received not later than May 3, 1983.

Board of Governors of the Federal Reserve System, April 13, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-10288 Filed 4-18-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities; Southern Bancorporation, 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 Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Southern Bancorporation,* Greenville, South Carolina (finance and insurance activities; Georgia): To engage through its subsidiary, World Acceptance Corporation, in making extensions of credit such as would be made by a consumer finance company and the sale of credit life, accident, health and property insurance related to extensions of credit made by World Acceptance Corporation. Such insurance activities are permissible under section 610(A) and (B) of the Garn-St Germain Depository Institutions Act of 1982. These activities will be conducted from an office in Columbus, Georgia, serving the Columbus SMSA. Comments on this application must be received not later than May 10, 1983.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mellon National Corporation,* Pittsburgh, Pennsylvania (mortgage banking, servicing, and insurance activities; Louisiana): To engage, through a *de novo* office of its subsidiary, Carruth Mortgage Corporation, in the general activities of a mortgage banking company, including the origination, sale and servicing of mortgage loans; the sale and servicing of such loans for institutional investors; and the sale of credit-related insurance including credit-accident and health, credit-life, and property and credit-related casualty insurance related to extensions of credit (such sale of credit-related insurance being a permissible activity under Subparagraph D of Title VI of the Garn-St Germain Depository Institutions Act of 1982). These activities will be conducted from offices in Lake Charles, Louisiana, serving southwestern Louisiana. Comments on this application must be received not later than May 12, 1983.

C. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Northwest Bancorporation,* Minneapolis, Minnesota (lending activities; central United States): To engage, through its wholly-owned subsidiary, Northwest Agricultural Credit Co., in lending and loan services activities including making or acquiring, for its own account or for the account of others, loans, real estate mortgages, or other extensions of credit and servicing loans, real estate mortgages, and other extensions of credit for any person. These activities would be conducted from Sioux Falls, South Dakota, serving Minnesota, Wisconsin, Iowa, South Dakota, North Dakota, Montana, Nebraska, Illinois, Missouri, Kansas, Colorado, Wyoming, Texas, Oklahoma, Idaho, Washington, and Oregon. Comments on this application must be received not later than May 3, 1983.

Board of Governors of the Federal Reserve System, April 12, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-10287 Filed 4-18-83; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Mail Order Rule Study Information Collection Requirement

AGENCY: Federal Trade Commission.

ACTION: Application to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) for clearance of a study of the economic impact of the FTC Mail Order Merchandise Rule.

SUMMARY: This application seeks clearance to conduct a survey to collect information about the economic impact on small mail order firms that are subject to the FTC Mail Order Merchandise Rule (16 CFR Part 435). This study is specified in the Commission's Plan for Periodic Review of Rules published under the Regulatory Flexibility Act, 5 U.S.C. 610. See FR 35118. The survey will be conducted with executives of two hundred mail order firms with sales of $7.5 million or less and with executives of fifty mail order firms with sales greater than $7.5 million.

DATE: Comments on this application must be submitted on or before May 19, 1983.

ADDRESS: Send comments to Ms. Nell Minow, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3001, Washington, D.C. 20530. Copies of this application may be obtained from: Public Reference Branch, Room 130, Federal Trade Commission, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Thomas J. Maronick, Office of Impact Evaluation, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, (202) 724-1877.

John H. Carley,

General Counsel.

[FR Doc. 83-10376 Filed 4-18-83; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

May Meetings

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following national advisory body scheduled to assemble during the month of May.

National Advisory Council on Drug Abuse

May 17-18; 9:00 a.m.
National Institutes of Health, Building 31C
Conference Room 8, Bethesda, Maryland 20205

Open—May 17; 9:00 a.m.-12 Noon
May 18; 9:00 a.m.-5:00 p.m.
Closed—Otherwise

Contact: Mrs. Sheila Gardner, Parklawn Building, Room 10A-56, Rockville, Maryland 20857, (301) 443-4843

Purpose: The National Advisory Council on Drug Abuse advises and makes recommendations to the Secretary, Department of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institutes on Drug Abuse, on the development of new initiatives and priorities and the efficient administration of drug abuse research, including prevention and treatment research, and research training. The Council also gives advice on policies and priorities for drug abuse grants and contracts, and reviews and makes final recommendations on grant applications.

Agenda: From 9:00 a.m.-12 Noon, May 17, and from 9:00 a.m.-5:00 p.m., May 18, the meeting will be open for discussion of administrative; announcements,

program development and policy issues. Otherwise, the Council will be performing final review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

As time permits on May 18, from 3:30–5:00 p.m., the Council will hear statements from interested organizations in the drug abuse field. Persons interested in appearing should contact the Executive Secretary to be scheduled. The oral presentation shall be no longer than 10 minutes, although written statements may be submitted in supplement.

National Advisory Mental Health Council

May 23–25; 9:00 a.m.
May 23; 9:00 a.m.–1:30 p.m.—National Institutes of Health, Building 31C, Conference Room 6, Bethesda, Maryland 20505
May 23; After 1:30 p.m.—Adjournment May 25—Parklawn Building, Conference Room G, 5600 Fishers Lane, Rockville, Maryland 20857
Open—May 23; 9:00 a.m.–1:30 p.m.
Closed—Otherwise
Contact: Mrs. Helen W. Garrett, Committee Management Officer, Parklawn Building, Room 17C–26, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333

Purpose: The National Advisory Mental Health Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institutes of Mental Health, regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Agenda: On May 23, the meeting will be open for discussion of NIMH policy issues and will include current administrative, legislative, and program developments. Attendance by the public for the open session will be limited to space available. Otherwise, the Council will conduct a final review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Board of Scientific Counselors, NIDA

May 23–25; 9:30 a.m.
Addiction Research Center, Conference Room,
Lexington, Kentucky 40583
Open—May 23; 9:30–10:00 a.m.
Closed—Otherwise
Contact: Mr. Francis C. Johnson, Baltimore; City Hospitals, Mason F. Lord (D) Building, Room 542A, Baltimore, Maryland 21224, (301) 396–9670

Purpose: The Board of Scientific Counselors provides expert advice to the Director, NIDA, on the drug abuse intramural research program through periodic visits to the laboratories for assessment of the research in progress and evaluation of productivity and performance of staff scientists.

Agenda: From 9:30–10:00 a.m., May 23, the meeting will be open for administrative announcements and program developments. Otherwise, the Board will be performing a review of the intramural research projects of the Addiction Research Center including an evaluation of individual scientific programs, and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of Section 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Basic Psychopharmacology Research Review Subcommittee of the Basic Psychopharmacology and Neuropsychology Research Review Committee

May 25–26; 9:00 a.m.
Holiday Inn, Silver Room North
8777 Georgia Avenue,
Silver Spring Maryland 20910
Open—May 25; 9:00–10:00 a.m.
Closed–Otherwise
Contact: Ms. Mary Cope, Parklawn Building, Room 9C–26, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–3944

Purpose: The Basic Psychopharmacology and Neuropsychology Research Review Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of research and research training activities relating to basic psychopharmacology and neuropsychology, with recommendations to the National Advisory Mental Health Council for final review.

Agenda: From 9:00–10:00 a.m., May 25, the meeting will be open for discussion of administrative announcements and program developments. Otherwise, the Committee will be performing initial review of applications for Federal assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

National Advisory Council on Alcohol Abuse and Alcoholism

May 26; 9:00 a.m.,
National Institutes of Health, Building, 31C, Room 6,
9000 Rockville Pike
Bethesda, Maryland 20205
Open—9:00 a.m.–4:00 p.m.
Closed—Otherwise
Contact: Mr. James Vaughan, Parklawn Building, Room 16C–20, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375

Purpose: The Council advises the Secretary, Department of Health and Human Services, regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and coherence with Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

Agenda: On may 26, the open session will be devoted to general business of the Council and discussion of current budget, legislative and program activities.

On May 26, at the closed session, the Council will conduct a final review of grant applications for Federal assistance and this session will not be open to the public in accordance with the determination by the Admnistrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions set forth in Section 552b(c)(6), and Section 10(d) of Pub. L. 92–463 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contact persons listed above. Summaries of the meeting and rosters of Committee members may be obtained as follows: NIAAA: Mr. Diana Widner, Committee Management Officer, Room 16C–21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–2860. NIDA: Ms. Claudette Wright, Committee Management Officer, Room 10–22, Parklawn Building, 5600 Fishers Lane,

Rockville, Maryland 20857, (301) 443–1644. NIMH: Ms. Helen W. Garrett, Committee Management Officer, Room, 17C–26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4333.

Dated: April 14, 1983.

Sue Simons,

Committee Management Officer, Alcohol, Drug Abuse and Mental Health Administration.

[FR Doc. 83-10191 Filed 4-18-83; 8:45 am]

BILLING CODE 4160-20-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Eighteenth National Immunization Conference; Open Meeting

A national Immunization Conference will be held May 16–19, 1983, at the Ramada Renaissance Hotel, 4736 Best Road, College Park, Georgia, telephone (404) 762–7676. This conference is sponsored by the Centers for Disease Control (CDC).

Federal, State, and local public health officials, as well as representatives from the private sector, who are involved in the organization and implementation of immunization activity will participate. The meeting is open to the public, limited only by the space available.

Registration will begin at the Ramada Renaissance Hotel at 12 noon and end at 5:00 p.m., on Monday, May 16. The program is scheduled to begin at 8:30 a.m., May 17, in the Renaissance Ballroom. All inquiries should be sent to: Mr. Jack Kirby, Chief, Program Services Branch, Division of Immunization, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333. Telephones: FTS: 236–1886; Commercial: 404/329–1886.

Dated: April 13, 1983.

William C. Watson Jr.,

Acting Director, Centers for Disease Control.

[FR Doc. 83-10321 Filed 4-18-83; 8:45 am]

BILLING CODE 4160-18-M

Fibrogenicity of Coal Slags; Open Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and will be open to the public for observation and participation, limited only by space available:

Date: May 17, 1983.
Time: 9:00 a.m. to 4:30 p.m.

Place: Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Purpose: To review and discuss an experimental animal study in which the fibrogenic potentials of three coal slag samples will be determined. Viewpoints and suggestions from industry, academia, other government agencies, and the public are invited.

Additional information may be obtained from: Lloyd E. Stettler, Ph. D., Division of Biomedical and Behavioral Sciences, National Institute for Occupational Safety and Health, Centers for Disease Control, 4676 Columbia Parkway, Cincinnati, Ohio 45226. Telephone: FTS: 684–8337; Commercial: 513/684–8337.

Dated: April 12, 1983.

William C. Watson, Jr.,

Acting Director, Centers for Disease Control.

[FR Doc. 83-10322 Filed 4-18-83; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 75N-0248]

Food Additive Status of Vitamin K Active Substances in Animal Food

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing its conclusions on the regulatory status of vitamin K active substances (VKAS) in animal foods. The agency has concluded that certain VKAS are prior sanctioned for certain uses, that it will not propose to formalize the regulatory status of the remaining VKAS and VKAS uses, and that future marketers of VKAS substances should consult with FDA before marketing such substances.

FOR FURTHER INFORMATION CONTACT: George Graber, Bureau of Veterinary Medicine (HFV–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4438.

SUPPLEMENTARY INFORMATION: In the Federal Register of August 18, 1976 (41 FR 35009), FDA issued a notice that Heterochemical Corp. (Heterochemical) had petitioned it to review and clarify the legal status of several VKAS being used as supplements in animal food. Heterochemical asked FDA to take the following actions: (1) Require discontinuation of the use of menadione; (2) require discontinuation of the use of menadione sodium bisulfite (MSB); (3) declare that menadione sodium bisulfite complex (MSBC) is generally recognized as safe (GRAS) for use as a source of vitamin K activity solely in poultry feeds at levels up to 2 grams (g) per ton; for all other purposes, FDA was asked to require the discontinuation of use of MSBC; and (4) establish a reference standard for MSBC "so that the lawful substance may properly be identified in the marketplace and so that users of the substance may be assured of its quality."

In the notice, FDA stated that "[i]n order to acquire the information necessary to determine whether these products are * * * GRAS or food additives, the Commissioner is considering whether to propose under the provisions of § 121.41(b) (21 CFR 121.41(b)) [now § 570.38(b), see 41 FR 38618; September 10, 1976]) to determine that menadione, menadione sodium bisulfite, and menadione sodium bisulfite complex are not GRAS and are food additives subject to section 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348)." The notice asked for comments so that FDA could review all available data before making that determination.

FDA received comments from 47 sources including industry representatives, university and consultant nutritionists, animal feed manufacturers, an animal feed manufacturers' association, and the U.S Department of the Interior. FDA has analyzed those comments, which included literature, unpublished data, feed labels and formulas, price lists, and other documents. The agency has also reviewed its files and other available information relating to VKAS. This notice summarizes the foregoing information and sets forth the agency's findings and conclusions.

A substance added to food is a food additive, and therefore subject to prior approval by FDA unless, among other things, it is covered by a prior sanction (issued before September 6, 1958) or is generally recognized by the experts as safe. A substance can be generally recognized by experts as safe based either on common use in food prior to January 1, 1958, or on scientific procedures. 21 U.S.C 321(s).

The agency has concluded that MSBC and menadione are subject to prior sanctions, under certain use conditions. In addition, all comments except one stated that all VKAS marketed in 1978 were GRAS for all uses. Further, VKAS have been marketed for a number of years on the basis that the substances were GRAS or prior sanctioned, or both. The agency has concluded, however, that the literature and data submitted

are not sufficient to permit the agency to affirm the GRAS status of any of the VKAS based on scientific procedures. The agency has determined that it will not propose to issue food additive regulations or formal GRAS affirmations at this time for VKAS. Future Marketers of new VKAS substances should consult with FDA before marketing such substances.

I. Marketing History

Vitamin K, the "Koagulation vitamin," is essential for proper blood clotting. Vitamins K_1 and K_2, natural vitamins isolated from different sources, had as of 1976 not been added to feed in their pure form. Vitamin K_3, or menadione, is a synthetic fat-soluble substance that in 1939 was discovered to have anti-hemorrhagic properties. Menadione was used in animal feed in the late 1940's and in the 1950's. Since then, however, there has been little use of menadione per se in animal feed because it is difficult to handle and has a short shelf life.

MSB and MSBC were developed in 1941. MSB is water soluble and less irritating than menadione; nevertheless, it has limited utility for feed use in its pure form. Heterochemical submitted evidence that MSB has never been manufactured in the United States and that it was not imported prior to 1958, but a number of firms introduced variations of MSB beginning in the early 1960's. Thus, while MSB as such is thought not to be well adapted for animal feeds, some new processes apparently have produced acceptable MSB forms.

Formed by the addition of sodium bisulfite to MSB, MSBC is more stable than MSB. Abbott Laboratories began marketing MSBC for animal use in 1983; Heterochemical started selling MSBC for animal use soon thereafter. Abbott intoduced a new MSBC in 1972, while Heterochemical has continued to market the MSBC that was introduced in 1953. VKAS that were on the market in 1976 were recommended for use in poultry, swine, and a number of other species.

None of the forms of VKAS described above have been a subject of food additive regulations. But FDA required a food additive regulation for menadione dimethylpyrimidinol bisulfite (MPB) because of concern about possible harmful effects from pyrimidine. FDA approved Heterochemical's petition for a food additive regulation for MPB in 1966 (21 CFR 121.286, revised January 1, 1967, now 21 CFR 573.620 as redesignated at 41 FR 38618; September 10, 1976), for use only in poultry feed. The agency approved use of MPB in swine in 1975 (40 FR 30108; July 17, 1975, amending 21 CFR 121.286, now 21 CFR 573.620).

The comments generally agreed that "vitamin K" was widely used in poultry rations prior to 1958. The weight of the submitted evidence indicates, however, that there was little pre-1958 use of VKAS in swine rations. VKAS were not commonly added to swine rations until 1968–1970, when a "bleeding pig" problem caused most commercial feed manufacturers and producers to include VKAS in their swine rations. Information regarding use in species other than poultry and swine was not well documented. Several comments contended that VKAS were used in feed for dogs, fish, game birds, mink, rabbits, and occasionally beef and dairy cattle prior to 1958.

The MSBC sold by Abbott and Heterochemical prior to 1958 was recommended for use at low levels—2 to 4 grams per ton (g/ton). Subsequently, higher levels have been recommended for use in the feed of poultry and other species.

Based on the comments submitted, FDA concludes that (1) MSBC was in use in poultry rations prior to 1958; (2) menadione was in use in poultry rations prior to 1958; (3) MSBC, and possibly menadione, were in use in swine rations prior to 1958, but the use was very limited; (4) MSBC and menadione were in limited use in feed for mink, certain fish (trout and salmon), and possibly other species prior to 1958; and (5) MSB was not in use in animal feed prior to 1958.

II. Regulatory History

A. *Prior Sanction.* "Prior sanction" means, among other things, explicit FDA approval granted with respect to use of a substance in food prior to September 6, 1958. 21 CFR 570.3(1). In a letter to the Peter Hand Foundation on November 16, 1954, FDA stated that the use of menadione or other sources of vitamin K in poultry feed was acceptable. The agency made a similar statement in a letter to Dawes Laboratory on April 25, 1955. The two FDA letters constitute evidence of prior sanction for menadione and MSBC. Although the letters referred explicitly only to "menadione," the agency concludes from the language of the letters, the marketing history, and the listings in the Official Publication of the Association of American Feed Control Officials (AAFCO) that the letters referred to MSBC as well as menadione. Menadione and MSBC were listed in the AAFCO publication starting in 1955.[1]

A prior sanction is limited to "a specific use(s), of a substance in food, i.e., the level(s), condition(s), product(s), etc., for which there was explicit approval * * *." 21 CFR 181.5(a). Accordingly, the sanction is limited to use in poultry. As noted above, there is evidence of limited use in swine prior to the issuance of the 1954 and 1955 sanctioning letters. The letters, however, limited the sanction to poultry. For example, the 1954 letter stated that there was no evidence of need for other species, and that the substance "is not and cannot be considered as entirely innocuous." The sanction is also limited to the use levels that were common in the 1950's (2 to 4 g/ton).

The comments did not submit sufficient information to permit a determination whether the prior sanctions would cover the MSB products and the new MSBC introduced by Abbott in 1972. Heterochemical's position is that these substances are sufficiently different from the pre-1958 substances so as to require food additive regualtions. Abbott, on the other hand, contends that its new MSBC is not sufficiently different so as to require a food additive petition. Heterochemical offered several tests and studies in support of its position.

FDA agrees that the data demonstrated differences in physical characteristics. Variability in biological response therefore could be expected, due to differences in concentration of menadione sodium bisulfite. The tests and studies did not, however, measure the differences in toxicity of the compounds. Such differences, if any, are important in determining the comparability of the substances for the purpose of coverage by a prior sanction.

One study submitted by Heterochemical measured the biological response of 10 VKAS (8 labeled MSB and 2 labeled MSBC). The author reported that "the vitamin K active materials of equal menadione content differ in their degree of biological activity." He concluded that factors other than the percent menadione cause the variation in vitamin K activity. He noted that his was not a toxicological study, but stated that there is need for evaluation of the toxicological properties of the substances.

[1] AAFCO is a corporation composed of officials of any State, dominion, Federal, or other governmental agency on the North American Continent who are responsible for regulating animal feeds or livestock remedies. One purpose of AAFCO is the development of just and equitable standards, definitions, and policies to be followed in enforcing laws relating to such substances. The Association's Official Publication, which is published annually, lists and defines ingredients considered acceptable for use in animal feed. The Official Publication is used by the feed industry in feed formulation.

FDA concludes that the study had a number of critical deficiencies and was inconclusive. The agency is not persuaded that toxicological studies are required on the VKAS that were marketed as of 1976.

Few of the other comments addressed the similarities of, and differences among, the various commercially available compounds. One comment stated that menadione and mendione derivative compounds all revert back to mendione for conversion to vitamin K to become biologically active; therefore, there would be no difference in the total effect. But the comment did not support this contention with references.

B. *Prior GRAS Determinations.* In a letter of June 7, 1960, to Crompton & Knowles Corp., FDA stated that menadione sodium bisulfite would not be a food additive for animal use when used under the commonly accepted conditions of good manufacturing practice. In the Federal Register of July 16, 1963 (28 FR 7262), the agency stated that "menadione in animal feed is not considered a food additive." Because by that time MSBC had been marketed for a decade, and because MSBC and MSB have often been referred to as "menadione," FDA concludes that the Federal Register statement referred not only to menadione but also to MSBC. The statement may also have applied to MSB, because that substance had appeared in the 1963 AAFCO Official Publication. The agency did not state the basis for the conclusion that the substance is not a food additive, i.e., whether it was prior sanctioned or GRAS, or both. MSB was listed as GRAS in the 1964 AAFCO publication, though, as were menadione and MSBC.

The 1976 Federal Register notice soliciting comments on VKAS stated, however, that the history of use of VKAS in the possession of FDA did not provide an adequate basis "upon which to conclude that such substances for animal use are GRAS" under criteria in the regulations. The substances have not been listed as GRAS in the regulations even though a number of natural and synthetic vitamins have been so listed since publication of the first GRAS list in 1960. AAFCO, however, continues to list MSB and MSBC as GRAS. 1982 AAFCO Official Publication, p. 167. The publication does not list menadione.

III. GRAS Status of VKAS

Section 570.30(a) (21 CFR 530.30(a)) provides that general recognition of safety may be based only on the views of experts qualified by scientific training and experience to evaluate the safety of substances added to food. Such recognition requires common knowledge about the substance throughout the scientific community knowledgeable about the safety of substances added to food.

For a substance used in food prior to January 1, 1958, general recognition may be based on common use in food. It is not clear whether any of the earlier FDA statements that VKAS were not food additives meant that the agency considered the substances to be GRAS based on common use. In any event, such general recognition would be for the same uses as those covered by the prior sanctions.

General recognition may also be based on scientific procedures. The applicable regulation, 21 CFR 570.30(b), states the following:

> General recognition of safety based upon scientific procedures shall require the same quantity and quality of scientific evidence as is required to obtain approval of a food additive regulation for the ingredient. General recognition of safety through scientific procedures shall ordinarily be based upon published studies which may be corroborated by unpublished studies and other data and information.

The comments submitted a large number of published studies, references to published studies, various other kinds of literature (such as company newsletters), and unpublished data. Virtually all the studies related to use in poultry and swine. There was reference only to one cattle study, and no studies in other species. Although the comments submitted many swine and poultry studies, all but one were designed to determine the need for vitamin K and the benefits of vitamin K supplementation, and not safety. The one exception was a 1976 toxicological study of MPB, the substance that is subject of a food additive regulation. The study concluded that the substance is safe in swine. FDA concludes, however, that the remaining studies do not provide the quantity and quality of data required for food additive approval. Therefore, it will not propose to affirm the substances as GRAS based on scientific procedures.

IV. Conclusion

VKAS have been added to animal food for more than 30 years, without apparent animal or human safety problems. They have been marketed on the basis that they are GRAS or prior sanctioned, or both. The agency does not plan to propose the issuance of food additive or GRAS affirmation regulations for VKAS at the present time. Therefore, the agency denies Heterochemical's petition.

But the agency advises those persons that intend to market new VKAS in the future to consult first with FDA. New forms of VKAS many raise potential safety questions such that a food additive regulation may be required. This was the case for MPB, because of concern about possible harmful effects from pyrimidine. Inquiries should be a addressed to Division of Animal Feeds (HFV-220), Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Dated: April 12, 1983.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs

[FR Doc. 83-10171 Filed 4-18-83; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Medicaid Management Information System Proposed System Requirements

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

ACTION: Proposed notice.

SUMMARY: In this notice, we are proposing five new system requirements for Medicaid Management Information Systems. We propose that the systems be required to accept and use exclusively:

(a) A uniform diagnostic coding system (the *International Classification of Diseases, 9th Revision, Clinical Modification* (ICD-9-CM)), wherever diagnostic coding is used;

(b) A common claim form for hospital billing (HCFA-1450);

(c) A uniform electronic billing format for institutional billing;

(d) A common claim form for noninstitutional providers (the revised version of the Health Insurance Claim Form, HCFA-1500); and

(e) A uniform procedure coding system (HCFA Common Procedure Coding System (HCPCS)).

These requirements would improve the efficiency and effectiveness of the Medicaid program.

DATE: To assure consideration, comments should be received by June 20, 1983. We realize that the implementation of the five system requirements contained in this notice will involve recordkeeping and/or reporting requirements. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), we have submitted a copy of this notice for review by the Office of Management and Budget (OMB) of the reporting and/or recordkeeping provisions. The reporting

and/or recordkeeping requirements will not be effective until OMB approval has been obtained.

ADDRESSES: Please address your comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO–33–PN, P.O. Box 17073, Baltimore, MD 21235.

Please address a copy of comments on information collection requirements to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503, Attention: Desk Officer for HHS.

If you prefer, you may deliver your comments to Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., in the District; or to Room 132, East High Rise Building, 6325 Security Boulevard, in Baltimore.

In commenting, please refer to file code BPO–33–PN.

Comments will be available for public inspection, beginning approximately 2 weeks from today in Room 309–G of the Department's offices at 200 Independence Avenue, S.W., in Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (telephone 202–245–7890).

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final notice, we will consider all comments and will respond to them in the preamble to that notice.

FOR FURTHER INFORMATION CONTACT: Charles Booth, 301–594–5415.

SUPPLEMENTARY INFORMATION:

Background

Section 1903(a)(3) of the Social Security Act authorizes Federal matching funds at 75 percent for the operation of approved Medicaid Management Information Systems (MMIS). These systems are mechanized claims processing and information retrieval systems that are designed in accordance with basic Federal guidelines. The purpose of these systems is to provide for more efficient, economical, and effective administration of State Medicaid plans. Federal matching is available at 90 percent for expenditures for design, development, installation and improvement of an approved MMIS.

The first MMIS that became operational was approved in 1972. Each State is required under section 1903(r) of the Act (as added by section 901 of the Mental Health Systems Act, Pub. L. 96–398, enacted October 7, 1980) to have in place an operational and approved MMIS by October 1982. As of October 1982, there were 40 operational MMISs. (However, States with populations of 1,000,000 or less according to the 1976 census and with less than $100,000,000 in Medicaid expenditures per year may obtain waivers from this requirement if they can demonstrate that an MMIS would not significantly improve the efficiency of the administration of the State plan. Five States have been given waivers from this requirement. They are Alaska, Delaware, Rhode Island, Nevada and Wyoming.)

In addition, section 1903(r) of the Social Security Act requires us to reduce Federal financial participation (FFP) to States that fail to meet MMIS requirements for systems reapproval. A reduction in FFP in State expenditures for operating an MMIS from a total of 75 percent to 50 percent is required, on an incremental basis, if a State agency fails to meet any MMIS performance standards or system requirements. (A system requirement governs the structure and composition of an MMIS system. Performance standards establish levels of achievement an MMIS must attain in terms of accuracy, timeliness and cost.) In these cases, the law requires us to reduce FFP by no less than 5 percentage points, and by no more than 25 percentage points. However, we may not reduce a State's FFP by more than 10 percentage points for any fiscal year. We are further required to review each State MMIS yearly to determine if it continues to meet MMIS performance standards and system requirements. In accordance with these requirements, we published the first set of performance standards that States must meet on June 30, 1981 (46 FR 33653).

Current regulations at 42 CFR 433.115 require us to publish for public comment in the **Federal Register** any proposed changes in system requirements for systems eligible for funding at 75 percent. For revisions that would make substantive changes, we must also publish both our response to the comments received on any proposed changes and the final decision in the **Federal Register**. In addition, we must publish the final requirement in the State Medicaid Manual. We must also allow an appropriate period for the State agencies to comply with the new requirements.

This notice, in accordance with the provisions of 42 CFR 433.115, sets forth five system requirement changes we propose to implement. The use of these new system requirements is intended to improve the overall efficiency and effectiveness of the Medicaid program, as they would result in Federal and State savings and simplify claims submission by providers.

Until we have the results of the yearly MMIS reviews conducted in fiscal year 1986, failure to meet any of these new requirements would not result in reduction of enhanced FFP. Any of these proposed requirements that become final would have to be implemented by October 1, 1985. Both 90 percent and 75 percent Federal matching are available now to meet the requirements of this notice.

If a State, through no fault of its own, cannot implement a requirement by the above deadline it will not have its FFP reduced (e.g., Medicare does not implement a requirement in their State or a contractor of the State has failed to perform). The application of any reduction of FFP will depend upon the State's effort and progress toward the implementation of all requirements.

Proposed System Requirements

System Requirement Change I: Diagnosis Coding

We propose to change the current system requirement that merely requires an MMIS to have a data element in it for a diagnosis code. Instead we propose to require each system to: (1) Accept and use exclusively for diagnosis coding the *International Classification of Diseases, 9th Revision, Clinical Modification* (ICD–9–CM); (2) accept and use exclusively the full ICD–9–CM diagnosis codes, including all five digit codes; (3) accept and use exclusively ICD–9–CM on all types of claims on which diagnoses are coded; and (4) accept and use exclusively ICD–9–CM wherever the data element "diagnosis code" is currently used. Many States have been using the ICDA–8, a forerunner of the ICD–9–CM that has fewer digits and is less comprehensive.

Because of the advantages of ICD–9–CM over other codes in use, HCFA and the Public Health Service jointly announced endorsement of ICD–9–CM on September 14, 1978 in a press release. Subsequently, we issued two informational memoranda to Medicaid State agencies, which recommended that they use ICD–9–CM for diagnosis coding for all services: HCFA–IM–78–58 on December, 15, 1978, and HCFA–IM 79–34 on September 14, 1979. Thus many States have been accepting, or are beginning to accept, ICD–9–CM diagnosis coding. Although many States already accept ICD–9–CM, by implementing the ICD–9–CM as a system requirement, we would have more States accepting and using the same code.

In September 1980, we issued IL 80-30 instructing Medicare contractors that, whenever, diagnosis coding is used, the full ICD-9-CM diagnosis is required. Thus,the use of ICD-9-CM is becoming more general in HCFA programs, and its usefulness should be enhanced by encouraging its further use in connection with MMIS.

Having a uniform diagnosis code in general, and using the ICD-9-CM code in particular, has several advantages. First, hospitals in MMIS States can use a single coding system instead of using several different ones for Medicare, Medicaid, and third party payers. Second, since ninety-five percent of hospitals already use ICD-9-CM for one or more insurers and for their own purposes, they will be able to eliminate the need to use a separate system for Medicaid, thus reducing burden. Third, ICD-9-CM is more discrete than other systems, allowing the State to make more accurate coverage and reimbursement determinations. Fourth, using a standard code would allow more States to use a "case mix" or diagnosis-related reimbursement method, which would reduce the burden on the State as well as the provider through the use of an abbreviated claim and would also result in fewer errors and faster payment. Fifth, we believe adoption of common identifiers of services being paid for with the use of a code like ICD-9-CM would make the processing of crossover and third party liability claims easier for all payers involved. Finally, we believe ICD-9-CM provides a significant improvement over other disease classifications now in use in the United States.

For these reasons and because we believe ICD-9-CM contains the most current and the most effective classification of diseases, we are proposing it be adopted uniformly for all MMIS.

System Requirement Change II: Comon Hospital Billing Form

We also propose to add a new system requirement that would require Medicaid State agencies in MMIS States to accept and use exclusively a common hospital billing form. The form would be used by hospitals who furnish services to medicaid recipients.

The form we would require States to accept and use exclusively is the Uniform Bill (UB-82), Standard Form HCFA-1450. This form was designed by a work group sponsored by the American Hospital Association (AHA). A previous form (UB-16), a predecessor of the current HCFA-1450, was used experimentally by both the Medicaid and Medicare programs in several States. Based on evaluation of this experiment by the National Uniform Billing Committee, that group has now recommended the HCFA-1450 as the standard form for hospital billing. The National Uniform Billing Committee is comprised of representatives from HCFA, the Blue Cross and Blue Shield Association, the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS), representatives of State hospital associations, the Federation of American Hospitals, the AHA, the Health Care Financial Management Association, and the Health Insurance Association of America. The Secretary has approved the use of the HCFA-1450 for both Medicare and Medicaid., We are requiring its use in the Medicare programs under sections 1814(a)(2) and 1871 of the Social Security Act and intend to implement the new form as expeditiously as possible throughout the Medicare program. We are also requesting all Medicaid State agencies to accept and use the form, even if they do not have an MMIS.

We are issuing to all Medicare contractors and to our regional offices instructions that contain procedures to be used in converting to the acceptance and use of HCFA-1450. We also intend to issue similar instructions to Medicaid State agencies in MMIS States if this proposal is adopted. Medicare contractors will work with the State uniform billing committees, which include hospitals and payers, concerning the printing and distribution of the form to the providers.

The exclusive acceptance and use of a common form would provide several benefits. First, hospitals would have to stock only one form with the various items on the form uniformly placed, providing increased efficiency and cost reductions. Some flexibility would be permittted, however, for adding unique elements that are necessary to meet local requirements. The form itself is not to be modified; there are blank fields that can be used for these unique elements.) Second, to the extent hospitals use one form, Federal program administration savings would result by facilitating the automated transfer of information among Federal programs; for example, Medicare-Medicaid crossover claims. Although there is now a transfer of information in many States between Medicare and Medicaid, use of the HCFA-1450 under the new requirement would enable more programs to use the data items on the form better and would also expedite interchange of data between the two programs for screening utilization and for other uses. Third, a single form would also assure compatibility of statistics between programs, which may have some beneficiaries eligible for both programs.

System Requirement Change III: Provider Electronic Billing File and Record Formats

We propose to add a new system requirement that would require Medicaid State agencies in MMIS States to accept and use exclusively the same record and file formats that are required by the Medicare program. (Record and file formats are the specific and uniform manner in which data are collected through an automated process.) The record and file formats would be used by Medicaid State Agencies in MMIS States for bills submitted by hospitals for payment under Medicaid. These formats were developed in a joint effort by HCFA, the Blue Cross and Blue Shield Association, the Health Insurance Association of America, the AHA, and others.

Currently, MMIS approval requirements in Part 11 of the State Medicaid Manual do not specify the form in which claim data are received. In the future, we would require new and continuing MMIS to be able to receive inpatient hospital claim data in the file and record formats described in the Medicare Intermediary Manual, section 3602.2ff., submitted on magnetic tape, floppy disk, diskette, cassette, or cartridge.

We expect two basic benefits from this proposed system change. First, it would be to the hospitals' advantage because they will be able to use the same formats for several payers, thus saving them a considerable amount of time and money. Second, the required uniform format, in conjunction with the required uniform bill, the HCFA-1450, would reduce paperwork and the reporting burden, in line, with the Presidential initiative to eliminate excessive paperwork.

System Requirement Change IV: Common Physician Claims Form

We propose to add a new system requirement that would require Medicaids State agencies in MMIS States to accept and use exclusively a common claim form for noninstitutional providers. The form would be used by physicians and other noninstitutional providers who furnish services to Medicaid recipients.

The form we would require Medicaid States agencies in MMIS States to accept and use exclusively is the Health Insurance Claim form, Standard Form HCFA-1500. The revised version of this

form, which does not contain substantial changes, will be available for use by Medicare beginning January 1, 1984. Persons who wish to review this form may obtain copies after June, 1983 from HCFA at the address at the beginning of the notice. It has replaced the old claim form HCFA–1490 for claims submitted by physicians and other noninstitutional providers for Medicare benefits. This new form was originally designed by a work group sponsored by the American Medical Association's (AMA) Council on Medical Services. The AMA form is being used by both the Medicaid and Medicare programs in several States, and has been adopted by CHAMPUS. We have approved the current, modified version of the AMA form for both Medicare and Medicaid. We are already requiring its use in the Medicare program and are requesting all Medicaid State agencies to accept and use the form even if they do not have an MMIS.

We have issued instructions to all Medicare contractors and to our regional offices containing procedures to be used in converting to the use of HCFA–1500; we also intend to issue similar instructions to Medicaid State agencies in MMIS States if this proposal is adopted. Each Medicare contractor has negotiated with the MMIS State agency and other third party users in the same locale concerning the printing and distribution of the form to the providers. In 25 States, these negotiations were completed by December 31, 1981, among the Medicare carriers and other payers wishing to use the form at that time. Twenty-two Medicaid State agencies were using the form by 1982 and seven planned to start accepting it in 1982 or early 1983.

The exclusive acceptance and use of a common form would provide several benefits. Physicians and others using the form would have to stock only one form for at least three insurers. The uniformity of the placement of the various items on the form provides efficiency and thus cost reductions for the providers. (Some flexibility is permitted in specified areas on the claims form for adding unique elements that are necessary to meet local requirements.) Also, to the extent providers use one form, Federal program administration savings will result by facilitating the transfer of information among Federal programs. Although there is now a transfer of information in many States between Medicare and Medicaid, more Medicaid States agencies would accept and use the HCFA–1500 form under the new requirement and so more programs would be better able to exchange data.

System Requirement Change V: HCFA Common Procedure Coding

We proposed to add a new system requirement that would require a State Medicare agency with an MMIS to accept and use exclusively a common procedure coding system. The system is the HCFA Common Procedure Coding System (HCPCS). This coding system would be used for coding procedures performed (for example, "closed reduction of ulna") and is basically used for determining reimbursement amounts. (By contrast, the ICD–9–CM coding system is used for coding diagnoses (for example, "acute myocardial infarction") as well as for statistical purposes; it is also used in conjunction with procedure codes for billing purposes.)

The AMA and HCFA developed the HCPCS in 1979 and 1980 by using the AMA's CPT–4 for physician codes and adding HCFA-developed codes for some nonphysician services. In addition, we developed conversion techniques to prevent unwarranted payment escalation. (For example, when Medicare carriers formerly converted from one coding system to another, there was an increase in program payment payout because the new system permitted physicians to code a given service as one with greater reimbursement and to split a given service into two components.)

We tested HCPCS in the Medicare and Medicaid programs in South Carolina for 12 months beginning July 1, 1980. Analysis of operation and payment data shows a high degree of acceptance by physicians and other noninstitutional providers. the trend in program outlays was consistent before and after implementation. There was no adverse impact on claims processing operations.

Currently, about half of the State Medicaid agencies and all Medicare carriers accept CPT–4 coding from their physicians. With the adoption of HCPCS by all State Medicaid agencies with MMIS, HCPCS would become the near-universal system for reporting physician services (the 1981 Blue Cross and Blue Shield Coding System is based on CPT–4, as well). Medicare carriers are converting to HCPCS.

To the extent that a single coding system is used within Medicare and Medicaid, there are three major benefits:

(1) Use of a single system by many payers would facilitate the use of electronic billing and the electronic exchange of paid claims data with complementary insurers and in Medicare-Medicaid crossover claims. Increased use of automated billing and data exchange would reduce the burden and costs for physicians, other noninstitutional providers, and payers if all are using HCPCS.

(2) Because HCFA, State Medicaid agencies, Medicare carriers, physicians, and other noninstitutional providers would be using the same precise terminology, there would be greater uniformity in the interpretation of coverage and reimbursement policy and there would be improvements in review of utilization. We believe this would result in improved management of the program and reduced program outlays, and provide better payment control.

Impact Analyses

Executive Order 12291

We have determined that this proposed notice is not likely to result in an annual economic effect of $100 million or meet other threshold criteria of section 1(b) of Executive Order 12291.

As noted above, we are proposing five new systems requirements for the MMIS. We have determined that implementation of each of the requirements includes Federal and State costs (90 percent FFP for MMIS systems and 10 percent State contribution for MMIS systems respectively).

We estimate that the Federal costs for implementing each provision are as follows:

1. Diagnosis Coding, $4 million.
2. Common Hospital Billing Form, $5 million.
3. Provider Electronic Billing Records and File Formats, $2.5 million.
4. Common Physician Claims Forms, $3 million.
5. HCFA Common Procedure Coding, $11 million.

These would be one-time costs and would be incurred during the next three fiscal years.

Thus the estimated Federal cost for these requirements would be $25.5 million, and the estimated State share would be $2.6 million. As the sum of these costs is significantly less than the $100 million threshold criterion of the Executive Order, a regulatory impact analysis is not required.

Although these estimates are based on information received from States, we request comments concerning costs, schedules and other factors affecting implementation, an estimate of savings from the implementation of these provisions, and how long it would take for savings to offset costs.

Regulatory Flexibility Act

The Secretary certifies under 5 U.S.C., section 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this proposed notice is not likely to result in a significant impact on a substantial number of small entities.

Four of these proposed requirements would have an impact on providers; all have an impact on Medicaid State agencies in MMIS States. We are not required to analyze the impact on States, as States are not considered "small entities" under the provisions of this Act. Also, we believe the impact on providers would not be adverse, as illustrated in the following examples.

First, the ICD–9–CM requirement would not have a significant impact on hospitals because 95 percent of hospitals already use it. Second, the National Uniform Billing Committee sought to develop a common hospital billing form that would simplify billing for hospitals submitting claims to Medicaid, while providing useful information to all participants. Third, the record and file format requirement was developed in conjunction with the Blue Cross Association, Health Insurance Association of America, AHA, and others. The results of this committee's effort should reduce the administrative burden on Medicaid providers, saving them considerable time and money, as they would be able to use the same record and file formats for multiple payers.

Fourth, to the extent there is any impact on noninstitutional providers (because of the HCPCS code and the HCFA 1500 requirements), the impact would be beneficial. Noninstitutional providers would be able to stock only one form and would have to use only one procedure code.

National provider and physician representatives have welcomed these changes as means to more efficient and effective operation of their businesses. These efficiencies would benefit providers and should not unduly burden their operations.

We recognize that there would be one-time implementation costs for physicians and other providers. However, we believe that those costs would be recovered quickly because the administrative burden would be lessened.

C. Discussion

We have determined that this proposal would not be a major rule or result in a significant impact on a substantial number of small entities. However, we believe that any costs associated with implementation of this proposal would be far outweighed by the benefits to be generated by improved MMIS activity.

As noted above, implementation of these requirements should result in numerous benefits to the Federal government, States, hospitals, physicians, other providers, and health care payers. We believe that the improved compatibility among health programs, and the increased sophistication and analytic power of existing information systems to assist with coverage determinations and in reimbursement for services, should result in significant savings to the Federal and State governments.

These savings should offset any initial costs and continue to provide benefits to the health care industry as well as society.

(Sections 1102, 1902(a)(4), 1903(a)(3), and 1903(r)(6) of the Social Security Act (42 U.S.C. 1302, 1396a(a)(4), 1396b(a)(3), and 1396b(r)(6); 42 CFR 433.115)

(Catalog of Federal Domestic Assistance Program No. 13.774, Medical Assistance)

Dated: March 11, 1983.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 83-10359 Filed 4-18-83; 8:45 am]

BILLING CODE 4120-03-M

Public Health Service

National Center for Health Services Research; Assessment of Medical Technology

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of what is known of the safety, clinical effectiveness, and use (indications) of Hyperthermic Chemotherapeutic Limb Perfusion for the treatment of melanoma of the extremities. Specifically, we are interested in knowing whether this method has significant advantages or disadvantages when compared with other methods of treatment for melanoma of the extremities. If it proves to be safe and clinically effective what are specific indications for its use and how many courses of therapy are reasonable and necessary? In addition, this assessment seeks to determine current status of hyperthermia in the treatment of malignancies in general. Are specific applications investigational or have they become treatments of choice?

For the purposes of this announcement, Hyperthermic Chemotherapeutic Limb Perfusion (HCLP) is defined as the process of heating an extremity by one of several techniques, isolating the extremity by tourniquet from the remainder of the body, and perfusing the extremity distal to the occlusion with blood and/or cytotoxic chemicals heated from 40.5 °C to 41.5 °C, or greater. Under some protocols the extremity is heated as is the perfusate. In others only the latter is heated. This method of treatment has been used alone or in conjunction with surgery and/or radiation. In some instances its use has been limited to the treatment of recurrent disease; in others, it is applied to the treatment of primary tumors.

This assessment addresses primarily the use of hyperthermic perfusion of extremities with chemotherapeutic agents in treating melanoma, and secondarily the general use of hyperthermia in the treatment of cancer.

The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than July 15, 1983, or within 90 days from the date of publication of this notice.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies since 1973 and other information related to the characterization of the patient population most likely to benefit, the clinical acceptability, and the effectiveness of this technology. Proprietary information is not being sought, but published commercial information may be submitted.

Written material should be submitted to: Enrique D. Carter, M.D., National Center for Health Services Research, Office of Health Technology Assessment, Park Building, Room 3–10, Stop #2, 5600 Fishers Lane, Rockville, Maryland 20857.

Further information is available from Enrique D. Carter, M.D., Health Science Analyst, at the above address or by telephone (301) 443–4990.

Dated: April 7, 1983.

Harold Margulies,

Director, Office of Health Technology Assessment, National Center for Health Services Research.

[FR Doc. 83-10355 Filed 4-18-83; 8:45 am]

BILLING CODE 4160-17-M

National Center for Health Services Research; Assessment of Medical Technology

The Public Health Service (PHS), through the Office of Health Technology Assessment (OHTA), announces that it is coordinating an assessment of what is known of the safety, clinical effectiveness, appropriateness, and use (indications) of Automatic Computer Assisted Perimetry. Specifically, we are interested in its application for measuring visual fields in glaucoma as well as other medical conditions in which its use can be demonstrated to be appropriate and necessary. This assessment also seeks to determine whether there are specific indications for static versus kinetic perimetry, whether any models offer special advantages or disadvantages over others, and whether automatic perimetry should be used for routine screening.

For the purposes of this announcement, Automatic Computer Assisted Perimetry is defined as the measuring of visual fields by computerized instruments that conduct a test according to intricate test logic programs, and measure contrast thresholds at selected predetermined points in the visual field. Some devices may employ static threshold measurements whereas others are capable of determining contrast threshold by kinetic means or both.

The PHS assessment consists of a synthesis of information obtained from appropriate organizations in the private sector and from PHS agencies and others in the Federal Government. PHS assessments are based on the most current knowledge concerning the safety and clinical effectiveness of a technology. Based on this assessment, a PHS recommendation will be formulated to assist the Health Care Financing Administration (HCFA) in establishing Medicare coverage policy. Any person or group wishing to provide OHTA with information relevant to this assessment should do so in writing no later than July 15, 1983, or within 90 days from the date of publication of this notice.

The information being sought is a review and assessment of past, current, and planned research related to this technology, a bibliography of published, controlled clinical trials and other well-designed clinical studies since 1978 and other information related to the characterization of the patient population most likely to benefit, the clinical acceptability, and the effectiveness of this technology. Proprietary information is not being sought, but published commercial information may be submitted.

Written material should be submitted to: Enrique D. Carter, M.D., National Center for Health Services Research, Office of Health Technology Assessment, Park Building, Room 3–10, Stop #2, 5600 Fishers Lane, Rockville, Maryland 20857.

Further information is available from Enrique D. Carter, M.D., Health Science Analyst, at the above address or by telephone (301) 443–4990.

Dated: April 7, 1983.

Harold Margulies,

Director, Office of Health Technology Assessment, National Center for Health Services Research.

[FR Doc. 83-10356 Filed 4-18-83; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Redelegation of Authority; Oregon and Washington

Redelegations of Authority from the Oregon State Director, Bureau of Land Management, to District Managers, Area Managers and selected State Office and District Office officials are contained in Oregon State Office Manual Supplement 1203. District Managers are authorized to make amendments and revisions to this Manual Supplement. Manual Supplement 1203 and amendments and revisions thereto are maintained and available to the public during normal business hours in each District Office in the States of Oregon and Washington and in the Oregon State Office, Bureau of Land Management, 825 NE Multnomah Street, Portland, Oregon 97208.

Dated: April 8, 1983.

Paul Vetterick,

Associate State Director.

[FR Doc. 83-10317 Filed 4-18-83; 8:45 am]

BILLING CODE 4310-84-M

[M 46267]

Montana; Termination of Proposed Withdrawal and Reservation of Lands

April 5, 1983.

Notice of Application, M 46267, filed by the Bureau of Land Management, U.S. Department of the Interior, for withdrawal and reservation of lands was published as FR Doc. 81–10413 on page 20784 of the issue of April 7, 1981. The withdrawal was proposed to established a progency site dedicated to the development of superior strains of lodgepole pine trees.

Principal Meridian

T. 12 N., R. 13 W.,

Sec. 7, M&B; more particularly described as follows:

Parcel 1

Beginning at a point, the said point being 263.66 feet north and 402.63 feet east of the center quarter corner of said Section 7; thence S 80°39' W a distance of 261.22 feet; thence N 11°12' W a distance of 386.82 feet; thence N 12°38' W a distance of 432.64 feet; thence N 32°29' E a distance of 158.26 feet; thence S 57°03' E a distance of 135.77 feet; thence S 05°20' E a distance of 358.82 feet; thence S 19°52' E a distance of 323.89 feet; thence S 28°28' E a distance of 178.56 feet; to the point of beginning.

Said parcel of land contains 4.0 acres more or less.

Parcel 2

Beginning at a point, the said point being 230.21 feet north and 567.04 feet east of the center quarter corner of said Section 7; thence N 47°11' W a distance of 181.43 feet; thence N 27°38' W a distance of 186.86 feet; thence N 14°54' W a distance of 230.51 feet; thence N 02°23' W a distance of 380.04 feet; thence N 50°01' W a distance of 186.57 feet, thence S 81°38' W a distance of 206.74 feet; thence N 14°21' W a distance of 272.60 feet; thence N 04°00' E a distance of 182.46 feet; thence S 63°51' E a distance of 99.52 feet; thence S 63°27' E a distance of 143.97 feet; thence S 63°46' E a distance of 197.62 feet; thence S 57°23' E a distance of 364.62 feet; thence S 04°45' W a distance of 160.40 feet; thence S 09°32' E a distance of 191.57 feet; thence S 25°43' E a distance of 310.44 feet; thence S 14°52' E a distance of 284.19 feet; thence S 60°18' W a distance of 266.17 feet to the point of beginning.

Said parcel of land contains 11.6 acres more or less.

The area described contains 15.6 acres of public land in Granite and Powell Counties, Montana.

Therefore, pursuant to the regulations contained in 43 CFR 2310.2–1(c), the land will at 8 A.M. on April 8, 1983, be relieved of the segregative effect of the above mentioned application and subject to a right-of-way issued April 6, 1983.

Roland F. Lee,

Chief, Branch of Lands.

[FR Doc. 83-10316 Filed 4-18-83; 8:45 am]

BILLING CODE 4310-84-M

[Realty Action, I-18532]

Competitive Sale of Public Lands in Bingham and Franklin Counties, Idaho

Summary: The following described land has been examined, and through the development of land use decisions based on public input, it has been determined that the sale of these tracts are consistent with Section 203 (a) of the

Federal Land Policy and Management Act of 1976. The lands will be offered for sale at public auction for no less than the appraised fair market value indicated below. Both sealed and oral bids will be accepted.

	Acres	Value
Tract No. 4:		
T. 12 S., R. 40 E., B.M., Sec. 3, lot 3	41.8	$9,400
Tract No. 5:		
T. 2 S., R. 37 E., B.M., Sec. 19, lot 3	20.25	9,700
Tract No. 6:		
T. 2 S., R. 36 E., B.M., Sec. 15, NW¼SE¼	40	8,400

The above agregates 102.25 acres.

Upon publication of this Notice in the **Federal Register**, the land described above will be segregated from all forms of appropriation under the public land laws, including the mining laws, but excepting the mineral leasing laws, for a period of two years, or until the lands are sold. The segregative effect may otherwise be terminated by the Authorized Officer by publication of a termination notice in the **Federal Register** prior to the expiration of the two-year period.

The lands will be subject to the following reservations when patented:

Tracts No. 4 and No. 6

1. Ditches and Canals.
2. Mineral Reservation.
3. Subject to All Existing Rights.

Tract No. 5

1. Ditches and Canals.
2. Mineral Reservation.
3. Subject to All Existing Rights.
4. A reservation to the U.S. of an easement over and across a 100 foot strip parallel and adjacent to the ordinary high water line of the Blackfoot River.

Dates: The pubic auction will be held on June 21, 1983 at 9:30 a.m. and 2:30 p.m.

Addresses: The public auctions will be held at the Soda Springs Resource Area Office for tract #4 at 9:30 a.m. and at Blackfoot, Idaho at the Auditorium in the County Annex at 2:30 p.m. for tracts #5 and 6. Additional information concerning these lands, terms and conditions of the sale and bidding instructions may be obtained from Marvin R. Bagley, Area Manager, at the Soda Springs Resource Area Office, 490 East 2nd. South, Soda Springs, Idaho or by calling (208) 547-2161 during office hours.

Supplementary Information: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager regarding the proposed action. Any adverse comments will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

For further information contact O'dell Frandsen, District Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

Dated: April 11, 1983.

O'dell A. Frandsen,

District Manager.

[FR Doc. 83-10215 Filed 4-18-83; 8:45 am]

BILLING CODE 4310-84-M

[F-14912-B]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14 of the Alaska Native Claims Settlement Act of December 18, 1971 (43 U.S.C. 1601, 1611 (1976) (ANCSA), will be issued to Northway Natives Incorporated for approximately 12 acres. The lands involved are within the Copper River Meridian, Alaska:

T. 14 N., R. 19 E.

The decision to issue conveyance will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner upon issuance of the decision. For information on how to obtain copies, contact Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513.

Any party claiming a property interest in lands affected by this decision, an agency of the Federal government, or regional corporation may appeal the decision to the Interior Board of Land Appeals, Office of Hearings and Appeals, in accordance with the regulations in 43 CFR Part 4, Subpart E, as revised.

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 petinent 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 the decision by personal service or certified mail, return receipt requested, shall have thirty days from the receipt of the 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 the decision by regular mail which is not certified, return receipt requested, shall have until May 19, 1983, to file and appeal.

Any party known or unknown who is adversely affected by the decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Bureau of Land Management, Alaska State Office, Division of ANCSA and State Conveyances.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeal. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, Alaska State Office, 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:

U.S. Department of the Interior, Bureau of Land Management, Fairbanks District Office, P.O. Box 1150, Fairbanks, Alaska 99701

Northway Natives Incorporated, P.O. Box 441, Northway, Alaska 99764

Doyon, Limited, Land Department, Doyon Building, 201 First Avenue, Fairbanks, Alaska 99701

Ann Johnson,

Chief, Branch of Alaska Native Claims Settlement Act, Adjudication.

[FR Doc. 83-10357 Filed 4-18-83; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

Endangered and Threatened Species Listing and Recovery Priority Guidelines

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service has developed draft guidelines governing the assignment of priorities to species for listing as Endangered and Threatened under the Endangered Species Act of 1973, as amended (Act) and development and implementation of recovery plans for species that are listed

under the Act. Comments are solicited from the public.

DATE: Comments on the draft guidelines must be received by June 20, 1983.

ADDRESS: Comments should be sent to Associate Director—Federal Assistance, U.S. Fish and Wildlife Service, Washington, D.C 20240, Attention: Priority Guidelines.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION:

Background

General—The Service recognizes that it is necessary to assign priorities to listing, delisting, and recovery actions in order to make the most appropriate use of the limited resources available to implement the Act. The following priority systems are based on an analysis of such factors as degree and immediacy of threat faced by a species, needs for futher information, and species' recovery potentials. Inasmuch as such assessments are subjective to some degree, and individual species may not be comparable in terms of all considerations, the priority systems presented must be viewed as guides and should not be looked upon as inflexible frameworks for determining resource allocations.

These systems are now in use on an interim basis pending final adoption of this proposal.

Listing, Delisting, and Reclassification Priorities—In the past, the Service has informally assigned priorities for listing species as Endangered or Threatened on the basis of several different systems. In 1979, a report to Congress (General Accounting Office, 1979) recommended that the Service officially adopt a listing priority system based primarily on consideration of the degree of threat faced by a species. Following this report, the 1979 Amendments to the Endangered Species Act (Pub. L. 96-159, 93 Stat. 1241) required that guidelines be established and published in the Federal Register, including "* * * a ranking system to assist in the identification of species that should receive priority review for listing * * *." Such a system was adopted (U.S. Fish and Wildlife Service, 1980), but not published in the Federal Register. This system was subsequently revised (U.S. Fish and Wildlife Service, 1981) so that priority for listing would be assigned within a given category of degree of threat so as to generally favor vertebrate animals ("higher life forms") in the following order: mammals, birds, fishes, reptiles, amphibians, vascular plants, insects, mollusks, other plants, and other invertebrates.

The 1982 Amendments to the Endangered Species Act (Pub. L. 97-304) retained the requirement that guidelines be published. However, the amendments and the accompanying Conference Report necessitate revision of the present system. Specifically, the amended Act requires that the priority system address delisting as well as listing of species and the Conference Report prohibits adoption of any system that would give consideration to whether species were "higher or lower life forms." The present proposal is intended to satisfy the requirements of the amended Act.

1. *Listing and Reclassification From Threatened to Endangered*—In considering species to be listed or reclassified from Threatened to Endangered, three criteria would be applied to establish 12 priority categories as follows (Table 1):

TABLE 1.—PRIORITIES FOR LISTING OR RECLASSIFICATION FROM THREATENED TO ENDANGERED

Threat		Taxonomy	Priority
Degree	Immediacy		
High	Imminent	Monotypic genus	1
		Species	2
		Subspecies	3
	Potential	Monotypic genus	4
		Species	5
		Subspecies	6
Low to moderate	Imminent	Monotypic genus	7
		Species	8
		Subspecies	9
	Potential	Monotypic genus	10
		Species	11
		Subspecies	12

Explanation—In keeping with the recommendaton of the General Accounting Office (GAO) and the Service's previous policy, the first criterion would be degree of threat. Species facing the greatest threats to their continued existence would receive highest listing priority.

The second criterion, immediacy of threat, is intended to assure that species facing actual, identifiable, threats are given priority over those for which threats are only potential or that are intrinsically vulnerable to certain types of threat but not known to be presently facing such threats. In assigning a species to a priority category under immediacy of threat, the Service would consider the known occurrence or lack of documented detrimental trade, habitat modification, significantly detrimental disease or predation, and other present or potential threats.

The third criterion is intended to devote resources on a priority basis to those species representing highly distinctive or isolated gene pools, as reflected by the taxonomic level at which they are recognized. The more isolated or distinctive a gene pool, the greater contribution its conservation is likely to make to the maintenance of ecosystem diversity. This final criterion implements the Act's stated concern for ecosystem conservation by recognizing the distinctness denoted by assignment of a species to a montypic genus, as well as the relative distinctness denoted by the recognition of a taxon at the level of species or subspecies.

2. *Delisting and Reclassification*—The Service currently reviews listed species every 5 years in accordance with Section 4(c)(2) of the Act to identify any that might qualify for removal from the lists, or reclassification. When species are identified in the course of these periodic reviews as warranting deletion from the lists or reclassification from Endangered to Threatened, priority for preparation of regulations would be assigned according to the system below (Table 2), employing two criteria to yield six categories. It should be pointed out that the priority numbers in Tables 1 and 2 are not comparable.

TABLE 2.—PRIORITIES FOR DELISTING AND RECLASSIFICATION FROM ENDANGERED TO THREATENED

Management impact	Petition status	Priority
High	Petitioned action	1
	Unpetitioned action	2
Moderate	Petitioned action	3
	Unpetitioned action	4
Low	Petitioned action	5
	Unpetitioned action	6

Explanation—In considering species for possible delisting or reclassification from Endangered to Threatened, this system is intended to focus on species whose original classification has become inappropriate due to changed circumstances or new information. Priority considerations would concern whether or not protection under the Act is any longer necessary and whether the listing causes an unwarranted management burden or unnecessarily restricts human acitivities.

The first consideration of the system accounts for the management burden entailed by the species' being listed, which, if the current listing is no longer accurate, could divert resources from more appropriate activities.

Because the Act mandates timely response to petitions, the system secondly considers whether the Service

has been petitioned to remove a species from the lists or reclassify it. This consideration is also intended to assign highest priority to those species whose delisting is likely to remove the greatest impacts on human activities inasmuch as such species would also be likely to be subjects of petitions.

It is not intended that existence of a petition or identified management impact with regard to a given species would direct or mandate any particular decision regarding its removal from the lists or its reclassification. The priority system is intended only to set priorities for development of rules. The decision regarding whether a species will be retained on the lists or in the Endangered category must be based on the considerations contained in Section 4(a)(1) of the Act and 50 CFR 424.11.

Recovery Plan Preparation and Implementation Priorities—The importance of recovery plans as guiding documents for recovering species has been recognized since 1972, when the Service developed its first draft recovery plan. Although the Service strongly encouraged their development, and some plans were developed, preparing a recovery plan for a species was elective until the 1978 Amendments to the Act required the development of a recovery plan for every listed Endangered and Threatened species, except when the Secretary determines that ". . . such a plan will not promote the conservation of the species."

Through fiscal year 1977, recovery plan development was not based on any established priority system. During fiscal year 1977, the Service developed a draft recovery priority system to be used as a guide for recovery planning and resource allocation. The system included three criteria—degree of threat, recovery potential, and taxonomic status, arranged in a matrix of 12 categories. The 1979 GAO report recommended that this draft recovery priority system be approved and implemented. The present propsal expands the taxonomy criterion to include "monotypic genus." This would expand the matrix to yield 18 species recovery numbers (see Table 3). As described in the preceding section on listing, this addition is intended to devote resources on a priority basis to those species representing highly distinctive or isolated gene pools.

The proposed system (as referenced in the 1979 GAO report) was adopted in 1980 (U.S. Fish and Wildlife Service, 1980). This system was subsequently revised to give priority within the existing matrix to taxonomic groups (higher life forms) as in the 1981 listing priority system. The system presently proposed deletes this preference for higher life forms and adds a new criterion on conflict required by the 1982 Amendments.

In particular, the 1982 Amendments specify that recovery plans shall, to the maximum extent practicable, give priority to those Endangered species or Threatened species most likely to benefit from such plans, particularly those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity. The present proposal is intended to satisfy the requirements of the amended Act. This proposal utilizes a modification of the three-factor system originally adopted by the FWS in 1980 but includes a fourth factor, conflict, which, if applicable, elevates the species in priority for development of a recovery plan and is to be an additional element in determining what actions are to be implemented for the recovery of a species. This fourth factor gives priority within each category in the preparation of recovery plans to those species that are, or may be, in conflict with construction or other development projects or other forms of economic activity. Thus, the species will retain its numerical rank and will acquire the letter designation of "C" indicating conflict, e.g., priority 7 would become 7C. The categories would be assigned as follows:

TABLE 3.—RECOVERY PRIORITY

Degree of threat	Recovery potential	Taxonomy	Priority	Conflict
High	High	Monotypic genus	1	1C.
	High	Species	2	2C.
	High	Subspecies	3	3C.
	Low	Monotypic genus	4	4C.
	Low	Species	5	5C.
	Low	Subspecies	6	6C.
	High	Monotypic genus	7	7C.
	High	Species	8	8C.
	High	Subspecies	9	9C.
Moderate	Low	Monotypic genus	10	10C.
	Low	Species	11	11C.
	Low	Subspecies	12	12C.
	High	Monotypic genus	13	13C.
	High	Species	14	14C.
	High	Subspecies	15	15C.
Low	Low	Monotypic genus	16	16C.
	Low	Species	17	17C.
	Low	Subspecies	18	18C.

Explanation—The first step in saving any species is to prevent its extinction. Thus the species with the highest degree of threat have the highest priority for preparing and implementation recovery plans. A species can be put in either a high, moderate, or low category, which represents the degree of threat. The high category means extinction is almost certain in the immediate future because of a rapid population decline or habitat destruction. Moderate means the species will not face extinction if recovery is temporarily held off, although there is a continual population decline or threat to its habitat. A species in the low category is rare, or is facing a population decline which may be a short-term, self-correcting fluctuation, or the impacts of threats to the species' habitat are not fully known.

Within the above categories, resources should be used in the most cost-effective manner. Priority for preparing and implementing recovery plans would go to species with the greatest potential for success. Recovery potential is based on how well biological and ecological limiting factors and threats to the species' existence are understood, and how much management is needed.

Taxa that are most genetically distinct should receive priority within any given category of degree of threat. Monotypic genera will be given priority over species, subspecies, or populations. This last criterion is in recognition that the loss of the most genetically distinct taxa is of greater significance than the loss of less genetically distinct taxa. That is, for example, the loss of a full genus is of greater significance than the loss of a single species or population of that species.

The second requirement concerning recovery plans mandated by the 1982 Amendments is that priority be given to those species "that are, or may be, in conflict with construction or other development projects or other forms of economic activity." This requirement will be satisfied by having any listed species or subspecies, lacking a recovery plan, and indentified as being, or having a recognizable potential for being, in conflict with a construction or development project, automatically qualify for the conflict column of the matrix. This species would then be considered high priority for having a recovery plan developed.

Conflict with construction or other development projects would be identified by consultations conducted with Federal agencies under Section 7 of the Act. Any species identified through Section 7 consultations as having

generated a negative biological opinion which concluded that a given proposed project would violate Section 7(a)(2) of the Endangered Species Act or resulted in the recommendation of reasonable and prudent alternatives to avoid a negative biological opinion would be assigned to the conflict category and would be given priority over all other candidates for recovery plan preparation and implementation in the same numerical category not involving a conflict. The Service would also contact other Federal agencies for their identification of listed species that are, or may be, in conflict with construction or other development projects or other forms of economic activity. Any species identified by this process would be assigned to the conflict category and would also be given priority over other candidates for recovery plan preparation and implementation within the same numerical category (see Table 3) not involving a conflict.

A task priority (1–3) is used in conjunction with species recovery numbers (1–18 or 1C–18C) in ranking those tasks that need to be accomplished for the recovery of a species. This combination results in a two-tiered priority system (species recovery number—task priority number) which serves to distribute the resources of the program equitably for all listed species. Recovery tasks will be assigned priorities based on the following:

1. *Priority 1*—An action that must be taken to prevent extinction or to prevent the species from declining irreversibly.

2. *Priority 2*—An action that must be taken to prevent a significant decline in species population/habitat quality, or some other significant negative impact short of extinction.

3. *Priority 3*—All other actions necessary to provide for full recovery of the species.

The highest priority activity (research proposal, permit proposal, etc.) is a 1C–1 priority (species recovery number 1C; task priority number 1). This is an action necessary to prevent extinction for a monotypic genus, with a high recovery potential, under a high degree of threat and in conflict with a construction or other development project. If resources were channeled into activities based solely on the recovery priority of a species, these resources would be utilized primarily for species with a recovery priority of 1C to 6. However, when the species' priority is viewed in conjuction with the task priority, we are able to identify the most critical activities for all species. This system would insure that resources are distributed to the most critically Endangered species.

References Cited

General Accounting Office. 1979. Endangered Species—A Controversial Issue Needing Resolution. Washington, D.C.

U.S. Fish and Wildlife Service. 1980. Appendix I. Priority System. pp. i–iv. *In:* Endangered Species Program Management Document. Washington, D.C.

U.S. Fish and Wildlife Service. 1981. Service prepares guidelines for ranking candidate species. Endangered Species Technical Bulletin. 6(8):1.

Authors

This notice was prepared by Dr. John J. Fay and Mr. W. L. Thomas of the Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975 and 235–2760).

Dated: April 11, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-10283 Filed 4-18-83; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Applications; Tennessee Valley Authority et al.

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.):*

Applicant: Tennessee Valley Authority Knoxville, TN—PRT 2–10196.

The applicant requests a permit to take pink mucket pearly mussels (*Lampsilis orbiculata)* from the Cumberland River (Tennessee) for enhancement of propagation and survival.

Applicant: Ralph V. Smith, Turquoisine Aviariis Calimesa, CA—PRT 2–9973.

The applicant requests a permit to import captive-bred golden-shouldered parakeets (*Psephotos chrysopterygius)* from aviculturists in West Germany for enhancement of propagation.

Applicant: Lincoln Park Zoological Gardens Chicago, IL—PRT 2–10230.

The applicant requests a permit to import one male and one female pink fairy armadillos (*Chlamyphorus truncatus)* taken from the wild in Mendoza, Argentina, by Wilham Jorge, Botucatu, Brazil, for enhancement of propagation and scientific research.

Applicant: Suarez-Gaona National Mexican Circus Venice, Florida—PRT 2–10248.

The applicant requests a permit to import three captive-bred bengel tigers (*Panthera tigris)* from Mexico for enhancement of propagation and survival under the definition of "Conservation Exhibition."

Applicant: Samuel M. McGinnis Manteca, CA—PRT 2–10249.

The applicant requests a permit to capture San Francisco garter snakes (*Thamnophis sirtalis tetrataenia)* for scientific research. Snakes are to be marked and their movements will be recorded by means of radio telemetry.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Rd., Arlington, Virginia, or by writing to the U.S. Fish & Wildlife Service, WPO, P.O. Box 3654, Arlington, VA 22203.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the above address. Please refer to the file number when submitting comments.

Dated: April 13, 1983.

Larry LaRochelle,

Acting Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 83-10279 Filed 4-18-83; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Mormon Pioneer National Historic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Mormon Pioneer National Historic Trail Advisory Council will be held beginning at 8:30 a.m. on April 28, and concluding at 12:00 noon, on April 29, 1983, at the Visitor Center Conference Room, Nauvoo Restoration, Incorporated, Nauvoo, Illinois. The Advisory Council was established by Pub. L. 90–543, Section 5(d), as amended by Pub. L. 95–625, to consult with the Secretary of the Interior through the National Park Service on matters concerning the trail, including selection of rights-of-way, markers and administration.

The meeting will be held for the purpose of providing management direction, implementation efforts, and trail strategies, for management and administration of the trail.

The meeting will be open to the public. However, facilities and space to accommodate members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file with the Council a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting or who will wish to submit written statements may contact Michael Beaudry, Trail Manager, Rocky Mountain Region, National Park Service, 655 Parfet Street, P.O. Box 25287, Denver, Colorado 80225 (303) 234-4942.

Minutes of the meeting will be available for inspection 4 weeks after the meeting at the above address.

Dated: April 1, 1983.

James B. Thompson,

Regional Director, Rocky Mountain Region.

[FR Doc. 83-10375 Filed 4-18-83; 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 April 8, 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 May 4, 1983.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Boulder County

Lafayette, *Congregational Church (Lafayette Coal Mining Era Buildings TR)*, 300 E. Simpson St.
Lafayette, *Kullgren House (Lafayette Coal Mining Era Buildings TR)*, 209 E. Cleveland St.
Lafayette, *Lafayette House (Lafayette Coal Mining Era Buildings TR)*, 600 E. Simpson St.
Lafayette, *Lewis House (Lafayette Coal Mining Era Buildings TR)*, 108 E. Simpson St.
Lafayette, *Miller House (Lafayette Coal Mining Era Buildings TR)*, 409 E. Cleveland St.

Delta County

Austin vicinity, *Ferganchick Orchard Rock Art Site*,

Denver County

Denver, *McCourt, Peter House*, 1471 High St.

Jefferson County

Arvada, *Russell-Graves House*, 5605 Yukon St.

Otero County

LaJunta, *Rourke, Eugene House*, 619 Carson St.

Park County

Como, *Como Roundhouse, Railroad Depot and Hotel Complex*, Off U.S. 285

Routt County

Oak Creek vicinity, *Foidel Canyon School*, NW of Oak Creek

FLORIDA

Escambia County

Pensacola, *North Hill Preservation District*, Roughly bounded by Blount, Palafox, Wright, Belmont, Reus, and DeVilliers Sts.

Manatee County

Bradenton, *Braden Castle Park Historic District*, Roughly bounded by the Manatee and Braden Rivers, Ponce DeLeon St. and Pelot Ave.

GEORGIA

Fulton County

Atlanta, *Butler Street Colored Methodist Episcopal Church*, 23 Butler St., SE.

Liberty County

McIntosh, *Cassels' Store*, Off U.S. 82

ILLINOIS

Bureau County

Princeton, *Greenwood Cottage*, 543 E. Peru St.

Champaign County

Champaign, *Vriner's Confectionery*, 55 Main St.

Clay County

Flora, *Shirver House*, 117 E. 3rd St.

Cook County

Cicero, *Morton, J. Sterling, High School East Auditorium*, 2423 S. Austin Blvd.

Kane County

Elgin, *Elgin Historic District*, Roughly bounded by Villa, Center, Park, N. Liberty, and S. Channing Sts.

Madison County

Edwardsville, *St. Louis Street Historic District*, 603—1306 St. Louis St. (some exclusions)
Edwardsville, *Weir, John, House*, 715 N. Main St.

Mercer County

Keithsburg, *Commercial House*, 4th and Main St.

Montgomery County

Virden vicinity, *Thomas, Lewis H., House*, N. Virden Rd.

St Clair County

Belleville vicinity, *Knobeloch-Seibert Farm*, Off IL 177

INDIANA

Clark County

Jeffersonville, *Grisamore House*, 111—113 W. Chestnut St.

Floyd County

New Albany, *Mansion Row Historic District*, Main St. between State and 15th Sts. and Market St. between 7th and 11th Sts.

Marion County

Indianapolis, *Byram-Middleton House*, 1828 N. Illinois St.
Indianapolis, *Marott's Shoes Building*, 18—20 E. Washington St.

IOWA

Adair County

Greenfield, *Greenfield Public Library (Public Library Buildings in Iowa TR)*, 215 S. 1st St.

Appanoose County

Centerville, *Drake Public Library (Public Library Buildings in Iowa TR)*, 115—117 Drake Ave.

Audubon County

Audubon, *Audubon Public Library (Public Library Buildings in Iowa TR)*, City Park

Benton County

Belle Plaine, *Hart Memorial Library (Public Library Buildings in Iowa TR)*, 9th Ave.
Vinton, *Vinton Public Library (Public Library Buildings in Iowa TR)*, 510 2nd Ave.

Black Hawk County

Waterloo, *Waterloo Public Library (Main Branch) (Public Library Buildings in Iowa TR)*, 626 Mulberry St.
Waterloo, *Waterloo Public Library (West Branch) (Public Library Buildings in Iowa TR)*, 528 W. 4th St.

Boone County

Boone, *Ericson Public Library (Public Library Buildings in Iowa TR)*, 702 Greene St.

Buena Vista County

Storm Lake, *Buena Vista County Historical Museum (Public Library Buildings in Iowa TR)*, E. 5th and Erie Sts.

Calhoun County

Lake City, *Lake City Public Library (Public Library Buildings in Iowa TR)*, 120 N. Illinois Rockwell City, *Carnegie Free Public Library (Public Library Buildings in Iowa TR)*, 426 5th St.

Cass County

Atlantic, *Atlantic Public Library (Public Library Buildings in Iowa TR)*, 507 Poplar

Cedar County

Tipton, *Tipton Public Library (Public Library Buildings in Iowa TR)*, 206 Cedar St.

Cerro Gordo County

Mason City, *Mason City Public Library (Public Library Buildings in Iowa TR)*, 208 E. State St.

Cherokee County

Cherokee, *Cherokee Public Library (Public Library Buildings in Iowa TR)*, 215 S. 2nd St.

Chickasaw County

Nashua, *Nashua Public Library (Public Library Buildings in Iowa TR)*, 204 Woodbridge

New Hampton, *New Hampton Public Library (Public Library Buildings in Iowa TR)*, 7 N. Water Ave.

Clarke County

Osceola, *Osceola Public Library (Public Library Buildings in Iowa TR)*, 300 S. Fillmore

Clinton County

Clinton, *Clinton Public Library (Public Library Buildings in Iowa TR)*, 306 8th Ave., S.

De Witt, *De Witt Public Library (Public Library Buildings in Iowa TR)*, 822 6th Ave.

Crawford County

Denison, *Denison Carnegie Library (Public Library Buildings in Iowa TR)*, 106 S. 14th St.

Davis County

Bloomfield, *Bloomfield Public Library (Public Library Buildings in Iowa TR)*, 107 N. Columbia

Decatur County

Leon, *Leon Public Library (Public Library Buildings in Iowa TR)*, 202 W. Commercial

Delaware County

Manchester, *Manchester Public Library (Public Library Buildings in Iowa TR)*, 309 N. Franklin St.

Emmet County

Estherville, *Estherville Public Library (Public Library Buildings in Iowa TR)*, 613 Central Ave.

Fayette County

Oelwein, *Oelwein Public Library (Public Library Buildings in Iowa TR)*, 16 1st Ave., NW

Franklin County

Hampton, *Hampton Public Library (Public Library Buildings in Iowa TR)*, 4 Federal St.

Fremont County

Hamburg, *Hamburg Public Library (Public Library Buildings in Iowa TR)*, 1301 Main St.

Greene County

Jefferson, *Jefferson Public Library (Public Library Buildings in Iowa TR)*, 200 W. Lincoln Way

Grundy County

Grundy Center, *Grundy Center Public Library (Public Library Buildings in Iowa TR)*, 703 7th St.

Reinbeck, *Reinbeck Public Library (Public Library Buildings in Iowa TR)*, 201 Black Hawk

Hamilton County

Webster City, *Kendall Young Library (Public Library Buildings in Iowa TR)*, 1201 Wilson Ave.

Hardin County

Eldora, *Eldora Public Library (Public Library Buildings in Iowa TR)*, 1219 14th Ave.

Iowa Falls, *Carnegie-Ellsworth Public Library (Public Library Buildings in Iowa TR)*, 520 Rocksylvania Ave.

Harrison County

Dunlap, *Dunlap Public Library (Public Library Buildings in Iowa TR)*, Iowa and 8th Sts.

Logan, *Logan Public Library (Public Library Buildings in Iowa TR)*, 121 E. 6th St.

Missouri Valley, *Missouri Valley Public Library (Public Library Buildings in Iowa TR)*, 119 N. 5th St.

Woodbine, *Woodbine Public Library (Public Library Buildings in Iowa TR)*, 58 5th St.

Henry County

Mount Pleasant, *Mount Pleasant Public Library (Public Library Buildings in Iowa TR)*, 200 N. Main St.

Howard County

Cresco, *Cresco Public Library (Public Library Buildings in Iowa TR)*, 320 N. Elm St.

Humboldt County

Humboldt, *Humboldt Free Public Library (Public Library Buildings in Iowa TR)*, 30 6th St., N.

Iowa County

Marengo, *Marengo Public Library (Public Library Buildings in Iowa TR)*, 100 Marengo Ave.

Jackson County

Maquoketa, *Maquoketa Free Public Library (Public Library Buildings in Iowa TR)*, 126 S. 2nd St.

Jasper County

Colfax, *Colfax Public Library (Public Library Buildings in Iowa TR)*, Walnut and Locust Sts.

Jefferson County

Fairfield, *Fairfield Public Library (Public Library Buildings in Iowa TR)*, Court and Washington

Johnson County

Iowa City, *Iowa City Public Library (Public Library Buildings in Iowa TR)*, 307 E. College St.

Jones County

Anamosa, *Anamosa Public Library (Public Library Buildings in Iowa TR)*, 100 E. 1st St.

Keokuk County

Sigourney, *Sigourney Public Library (Public Library Buildings in Iowa TR)*, 203 N. Jefferson St.

Kossuth County

Algona, *Algona Public Library (Public Library Buildings in Iowa TR)*, 110 E. Nebraska St.

Lee County

Fort Madison, *Cattermole Memorial Library (Public Library Buildings in Iowa TR)*, *614 7th St.*

Linn County

Cedar Rapids, *Cedar Rapids Public Library (Public Library Buildings in Iowa TR)*, 428 3rd Ave., SE

Marion, *Marion Carnegie Library (Public Library Buildings in Iowa TR)*, 1798 7th Ave.

Marion, *Marion Carnegie Library (Public Library Buildings in Iowa TR)*, 1798 7th Ave.

Lucas County

Chariton, *Chariton Free Public Library (Public Library Buildings in Iowa TR)*, Braden Ave.

Madison County

Winterset, *Winterset Public Library (Public Library Buildings in Iowa TR)*, 124 W. Court Ave.

Mahaska County

Oskaloosa, *Oskaloosa Public Library (Public Library Buildings in Iowa TR)*, S. Market and 2nd Ave., W.

Marion County

Knoxville, *Knoxville Public Library (Public Library Buildings in Iowa TR)*, 213 E. Montgomery St.

Pella, *Carnegie-Viersen Public Library (Public Library Buildings in Iowa TR)*, 823 Broadway

Marshall County

Marhsalltown, *Marshalltown Public Library (Public Library Buildings in Iowa TR)*, 36 N. Center St.

Mills County

Glenwood, *Glenwood Public Library (Public Library Buildings in Iowa TR)*, 109 N. Vine St.

Malvern, *Malvern Public Library (Public Library Buildings in Iowa TR)*, Main and 5th Sts.

Mitchell County

Osage, *Sage Public Library (Public Library Buildings in Iowa TR)*, 806 Main St.

Osage, *Sage Public Library (Public Library Buildings in Iowa TR)*, Main St.

Monroe County

Albia, *Albia Public Library (Public Library Buildings in Iowa TR)*, 203 Benton Ave., E.

Montgomery County

Red Oak, *Red Oak Public Library (Public Library Buildings in Iowa TR)*, 2nd and Washington Sts.

Villisca, *Villisca Public Library (Public Library Buildings in Iowa TR)*, 204 S. 3rd Ave.

Muscatine County

West Library, Free Public Library (Public Library Buildings in Iowa TR), 4th and Spencer Sts.

O'Brien County

Sutherland, *General N. B. Public Library (Public Library Buildings in Iowa TR)*, Ash and 4th Sts.

Page County

Clarinda, *Clarinda Public Library (Public Library Buildings in Iowa TR)*, 300 N. 16th St.

Shenandoah, *Shenandoah Public Library (Public Library Buildings in Iowa TR)*, 201 S. Elm St.

Palo Alto County

Emmetsburg, *Emmetsburg Public Library (Public Library Buildings in Iowa TR)*, 10th St. on Courthouse Sq.

Pottawattamie County

Council Bluffs, *Council Bluffs Free Public Library (Public Library Buildings in Iowa TR)*, 200 Pearl St.

Poweshiek County

Montezuma, *Montezuma Public Library (Public Library Buildings in Iowa TR)*, E. Liberty and 3rd Sts.

Ringgold County

Mount Ayr, *Mount Ayr Public Library (Public Library Buildings in Iowa TR)*, 121 W. Monroe St.

Sac County

Odebolt, *Odebolt Public Library (Public Library Buildings in Iowa TR)*, 306 W 2nd St.

Sac City, *Sac City Public Library (Public Library Buildings in Iowa TR)*, 6th and Main Sts.

Scott County

Davenport, *Lee Apartments (Cook Memorial Library) (Public Library Buildings in Iowa TR)*, Brady and 6th St.

Shelby County

Harlan, *Harlan Public Library (Public Library Buildings in Iowa TR)*, 1203 7th St.

Story County

Nevada, *Sillimon Memorial Library (Public Library Buildings in Iowa TR)*, 631 K Ave.

Tama County

Tama, *Tama Public Library (Public Library Buildings in Iowa TR)*, 901 McClellan St.

Traer, *Traer Public Library (Public Library Buildings in Iowa TR)*, 531 2nd St.

Taylor County

Bedford, *Beford Public Library (Public Library Buildings in Iowa TR)*, Jefferson St.

Union County

Creston, *Gibson, Matilda J., Memorial Library (Public Library Buildings in Iowa TR)*, 310 N. Maple St.

Wapello County

Eldon, *Eldon Carnegie Library (Public Library Buildings in Iowa TR)*, IA 16

Ottumwa, *Ottumwa Public Library (Public Library Buildings in Iowa TR)*, 129 N. Court St.

Warren County

Indianola, *Indianola Public Library (Public Library Buildings in Iowa TR)*, 106 W. Boston

Wayne County

Corydon, *Corydon Public Library (Public Library Buildings in Iowa TR)*, N. DeKalb St.

Winnebago County

Forest City, *Forest City City Hall (Public Library Buildings in Iowa TR)*, N. Clark St.

Forest City, *Forest City Public Library (Public Library Buildings in Iowa TR)*, E. I St. and Clark

Woodbury County

Sioux City, *Greenville Neighborhood Center (Sioux City Public Library Fairmont Branch) (Public Library Buildings in Iowa TR)*, 220 S. Fairmont

Sioux City, *Sioux City Public Library (Leeds Branch) (Public Library Buildings in Iowa TR)*, 3901 Floyd Blvd

Sioux City, *Sioux City Public Library (Main Branch) (Public Library Buildings in Iowa TR)*, 705 6th St.

Sioux City, *Sioux City Public Library (North Branch) (Public Library Buildings in Iowa TR)*, 810 29th St.

Sioux City, *Sioux City Public Library (Riverside Branch) (Public Library Buildings in Iowa TR)*, 117 Wright Ave.

Sioux City, *Sioux City Public Library (Smith Villa Branch) (Public Library Buildings in Iowa TR)*, 1509 George Ave.

Wright County

Clarion, *Clarion Public Library (Public Library Buildings in Iowa TR)*, 302 N. Main St.

MARYLAND

Baltimore County

Glencoe, *Glencoe*, 1314 Glencoe Rd.

Queen Annes County

Stevensville, *Cray House*, Cockey's Lane

MINNESOTA

Carver County

Waconia, *Waconia City Hall*, 9 W. 1st St.

Cook County

Grand Marais, *Cook County Courthouse*, 5th Ave. W. and 2nd St.

Kandiyohi County

Spicer vicinity, *Spicer, John M., Summer House and Farm*, 600 S. Lake Ave.

Norman County

Ada, *Norman County Courthouse*, 3rd Ave. E. and 1st St. E.

Red Lake County

Red Lake Falls, *Red Lake County Courthouse*, Main Ave.

MISSOURI

Taney County

Walnut Shade vicinity, *Bonniebrook Homestead*, U.S. 65

NEVADA

Washoe County

Reno, *Nevada-California-Oregon Railway Locomotive House and Machine Shop*, 401 E. 4th St.

NEW YORK

Clinton/Essex Counties

Keeseville, *Double-span Metal Pratt Truss Bridge (Keeseville Village MRA)*, AuSable St.

Keeseville, *Keeseville Historic District (Keeseville Village MRA)*, Roughly bounded by Vine, Chesterfield, Clinton, Hill Pleasant, Front, and Beech Sts.

Dutchess County

Millbrook vicinity, *Lynfeld*, South Rd.

Essex County

Keeseville, *Rembrandt Hall (Keeseville Village MRA)*, Clinton St.

Keeseville, *Rembrandt House (Keeseville Village MRA)*, Kent St.

NORTH DAKOTA

Bureleigh County

Bismarck, *Soo Hotel*, 112–114 5th St. N.

Cass County

Fargo, *Cole Hotel*, 401–407 Northern Pacific Ave.

Fargo, *Knerr Block, Floyd Block, McHench Building, and Webster and Coe Building*, 13, 15, 17–19, and 21–23 8th St. S.

Fargo, *Powers Hotel*, 400 Broadway

Hettinger County

New England, *Riverside, 418 Main St.*

Morton County

Mandan, *Lewis and Clark Hotel*, 404 W. Main St.

Traill County

Portland vicinity, *Lucken Farm*, N of Portland

OKLAHOMA

Beaver County

Floris, *Floris Grain Elevator (Woodframe Grain Elevators of Oklahoma Panhandle TR)*, Off U.S. 64

Knowles, *Knowles Grain Elevator (Woodframe Grain Elevators of Oklahoma Panhandle TR)*, U.S. 64

Turpin, *Turpin Grain Elevator (Woodframe Grain Elevators of Oklahoma Panhandle TR)*, Off U.S. 64

Blaine County

Southard, *Old Plant Office Building, U.S. Gypsum Co.*, OK 51–A

Mayes County

Salina, *Lewis Ross/Cherokee Orphan Asylum Springhouse*, Off OK 20

Oklahoma County

Oklahoma City, *Avery Building (Red Brick Warehouses of Oklahoma City TR)*, 15 E. California Ave.

Oklahoma City, *Case, J.I., (Red Brick Warehouses of Oklahoma City TR)*, 2 E. California Ave.

Oklahoma City, *Kingman-Moore Building (Red Brick Warehouses of Oklahoma City TR)*, 100 E. California Ave.

Oklahoma City, *Mideke Supply Building (Red Brick Warehouses of Oklahoma City TR)*, 100 E. Main St.

Oklahoma City, *Miller-Jackson (Red Brick Warehouses of Oklahoma City TR)*, 121 E. California Ave.
Oklahoma City, *Oklahoma Hardware Building (Red Brick Warehouses of Oklahoma City TR)*, 27 E. California Ave.
Oklahoma City, *Rock Island Plow Building (Red Brick Warehouses of Oklahoma City TR)*, 29 E. Reno Ave.
Oklahoma City, *Sherman Machine and Iron Works Building (Red Brick Warehouses of Oklahoma City TR)*, 26 E. Main St.
Oklahoma City, *Stanford Furniture Co. Building (Red Brick Warehouses of Oklahoma City TR)*, 1 E. Sheridan Ave.
Oklahoma City, *Wells Fargo Depot (Red Brick Warehouses of Oklahoma City TR)*, 115 E. Reno Ave.

Ottawa County

Miami, *Coleman Theater*, 1st and Main Sts.
Miami, *Coleman George L., Sr., House*, 1001 Rockdale St.
Miami, *Commerce Building/Hancock Building*, 103 E. Central

Texas County

Adams, *Adams Woodframe Grain Elevator (Woodframe Grain Elevators of Oklahoma Panhandle TR)*, N of OK 3
Baker, *Baker Woodframe Elevator (Woodframe Grain Elevators of Oklahoma Panhandle TR)*, SR 2847
Baker, *Baker Woodframe Grain Elevator (Woodframe Grain Elevators of Oklahoma Panhandle TR)*, Off U.S. 64
Eva, *Eva Woodframe Grain Elevator (Woodframe Grain Elevators of Oklahoma Panhandle TR)*, OK 95
Hooker, *Hooker Woodframe Grain Elevator (Woodframe Grain Elevators of Oklahoma Panhandle TR)*, Off Texas Ave.
Hough, *Hough Woodframe Elevator (Woodframe Grain Elevators of Oklahoma Panhandle TR)*, OK 95
Mouser, *Mouser Grain Elevator (Woodframe Grain Elevators of Oklahoma Panhandle TR)*, Off SR 136
Mouser, *Mouser Woodframe Grain Elevator/Collingword Elevator (Woodframe Grain Elevators of Oklahoma Panhandle TR)*, Off SR 136
Muncey, *Tracy Woodframe Grain Elevator (Woodframe Grain Elevators of Oklahoma Panhandle TR)*, N of U.S. 64
Optima, *Optima Grain Elevator (Woodframe Grain Elevators of Oklahoma Panhandle TR)*, U.S. 54

OREGON

Medford, Fluhrer Bakery Building, 29 N. Holly St.

Josephine County

Grants Pass, *Ahlf, John and Susanna, House*, 762 NW 6th St.
Grants Pass, *Flanagan, Dr. William H., House*, 720 NW 6th St.
Grants Pass, *Smith, Herbert and Katherine, House*, 139 SW I St.

Linn County

Brownsville, *Cooley, George C., House*, 220 Blakely Ave.

Marion County

Salem, *First Methodist Episcopal Church of Salem*, 600 State St.

PENNSYLVANIA

Montgomery County

Port Kennedy, *Kennedy Mansion*, 1050 Valley Forge Rd.

TEXAS

Kleberg County

Kingsville, *King, Henrietta M., High School*, Kleberg Ave. and 3rd St.

WISCONSIN

Eau Claire County

Eau Claire, *Emery Street Bungalow District (EauClaire MRA)*, Emery St. between Chauncey and Agnes Sts.
Eau Claire, *Randall Park Historic District (EauClaire MRA)*, Roughly bounded by Lake and Niagara Sts., 3rd and 5th Aves.
Eau Claire, *Third Ward Historic District (EauClaire MRA)*, Roughly bounded by Chippewa River, Park Pl., Gilbert Ave., and Farwell St.

[FR Doc. 83-10374 Filed 4-18-83; 8:45 am]
BILLING CODE 4310-70-M

Office of the Secretary

Meeting; Correction

The purpose of this notice is to correct the day of the Alaska Land Use Council meeting from Tuesday, May 11, 1983 to Wednesday, May 11, 1983.

The notice was published on Friday, April 1, 1983 on page 14059.

William P. Horn,

Deputy Under Secretary.

April 14, 1983.

[FR Doc. 83-10403 Filed 4-18-83; 8:45 am]
BILLING CODE 4310-10-M

Office of Surface Mining Reclamation and Enforcement

Determination of Valid Existing Rights Within Otter Creek Wilderness Area of the Monongahela National Forest

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

ACTION: Request for comments.

SUMMARY: The Otter Creek Coal Company has requested a determination by the Office of Surface Mining Reclamation and Enforcement (OSM) that its proposed underground coal mining operation on Federal lands in the Otter Creek Wilderness Area, West Virginia, is not prohibited or limited by Section 522(e) of the Surface Mining Control and Reclamation Act of 1977. Specifically, the Otter Creek Coal Company has asked OSM to determine that the company has "valid existing rights" under that section of the Act. OSM is giving notice of receipt of that request and soliciting public comment on it.

DATES: Written comments accepted until 5:00 p.m. e.d.t., on July 18, 1983.

Public meetings scheduled on request only.

ADDRESSES: Written comments: Deliver to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (R&I #83-268), Room 5315, 1100 "L" Street, NW., Washington, D.C., or mail to the Office of Surface Mining, U.S. Department of the Interior, Administrative Record (R&I #83-268), Room 5315L, 1951 Constitution Avenue, NW., Washingtoon, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Murry Newton, Chief, Branch of Regulatory Programs, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240. Telephone: (202) 434-5866.

SUPPLEMENTARY INFORMATION:

I. Public Commenting Procedures

Written Comments: Written comments should be as specific as possible, focus on the issues in this matter, and include explanations in support of the commenter's recommendations. OSM cannot ensure consideration of comments received after the close of the comment period or those delivered during the comment period to an address other than that specified. Commenters are required to submit five copies of their comments to the OSM address listed above under **"ADDRESSES."**

Public Meetings: Persons wishing to meet with OSM representatives may request a meeting at the OSM Office listed in **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."**

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record Room (1100 "L" Street). A written summary of each public meeting will be made part of the Administrative Record.

II. Background

Section 522(e) of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (Act), prohibits "surface coal mining operations" on Federal lands within the boundaries of certain protected areas, subject to "valid existing rights" (VER). 30 U.S.C. 1272(e). The Act includes among such protected areas units of the National Wilderness

Preservation System. 30 U.S.C. 1272(e). The term "surface coal mining operations" is defined in Section 701(28) of the Act (30 U.S.C. 1291(28)) and 30 CFR 700.5 to include the surface impacts incident to underground coal mining operations. The term "valid existing rights" is defined at 30 CFR 761.5 but has been proposed to be redefined. A statement of the draft final definition is included in OSM's recently published "Final Environmental Impact Statement. OSM EIS–1: Supplement."

The Otter Creek Coal Company ("the company") alleges that it owns the subsurface mineral estate underlying 18,379.94 acres of land, most of which is located under the Otter Creek Wilderness Area (OCWA) and all of which is within the Monongahela National Forest, Randolph and Tucker Counties, West Virginia. By letter of January 28, 1983, the company requested that OSM determine whether it has valid existing rights to mine its mineral estate underlying the OCWA, and included with its VER request a proposed plan describing the manner in which it intends to mine its mineral estate. This request has been filed in accordance with the U.S. Court of Claims decision in *Otter Creek Coal Company v. United States*, No. 83–79L, requiring the company to request a VER determination by OSM before seeking further judicial relief.

OSM solicits public comment on the company's request. Specifically, OSM is interested in:

(1) Additional facts or documents that exist or may be needed related to the application;

(2) Suggestions as to the appropriate approach to use in applying a Constitutional "takings" theory to the application, particularly in light of possible access to the coal underlying the OCWA from outside the Area; and

(3) Suggested procedures that OSM may dopt to assure that the issue is expeditiously and farily resolved, including the burden of proof, public participation and the standard for reaching a determination.

The company's request, including the proposed mining plan and all supporting data and material, is available for public inspection and copying during normal business hours at the location shown under **"ADDRESSES."**

Dated: April 14, 1983.

J. R. Harris,

Director, Office of Surface Mining.

[FR Doc. 83-10386 Filed 4-18-83; 8:45 am]

BILLING CODE 4310-05

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Decision Notice; Finance Applications

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 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 the following, please direct status calls to Team 1 at 202–275–7992

Volume No. OP1–FC–137

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC–FC–81330. By decision of April 11, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, Review Board Number 2 approved the transfer to Boyertown National Corporation, of 1129 High St., Pottstown, PA, of Certificate No. MC–21900, issued October 1, 1965, to Sherwood L. Yergey and David A. Yergey, doing business as Yergey's Moving and Storage, of 1129 High St., Pottstown, PA, authorizing the transportation of (1) household goods, between Pottstown, PA, and points within 15 miles of Pottstown, on the one hand, and, on the other, points in NY and NJ, and (2) cloth and cloth products, between Pottstown, PA, Bridgeton, NJ, and Newburgh, NY. Applicant's representative: Sherwood L. Yergey, 1129 High St., Pottstown, PA 19464.

Volume No. OP1–FC–138

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Members Parker and Fortier participating in part.)

MC–FC–81284. By decision of April 8, 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 EASTERN OREGON FAST FREIGHT, INC., Portland, OR, of Certificate No. MC–144981F, and (Sub-Nos. 1F, 3F, 4F, and 5), issued August 16 1979, July 24, 1980, December 22, 1980, March 13, 1981, and November 27, 1981, respectively, to JOHN DAY-PORTLAND AUTO FREIGHT, INC., Portland, OR, authorizing the transportation (A) over regular routes, of general commodities (except classes A and B explosives), (1) between Portland and John Day, OR, over U.S. Hwy 26, (2) between Condon, OR, and junction OR Hwy 19 and U.S. Hwy 26 near Dayville, OR, over OR Hwy 19, and (3) between John Day and Hines, OR, over U.S. Hwy 395, serving all intermediate points in (1)–(3) above, and (B) over irregular routes, of (1) general commodities with exceptions (a) between Portland, OR, on the one hand, and, on the other, points in Grant, Harney and Wheeler Counties, OR, (b) between John Day, OR, on the one hand, and, on the other, points in the U.S., and (2) lumber and wood products, from points in Grant and Harney Counties, OR, to points in ID, UT, WY, CO, WA, CA, and NV. Transferee is a carrier holding authority under No. MC–87079. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210.

MC–FC–81341. By decision of April 12, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. Part 1181, Review Board Number 1 approved the transfer to CINTRAN, INC., Cincinnati, OH, of Certificate No. MC–133541 Sub 8F, issued November 25, 1980, and Permit No. MC–133541 Sub 12F, issued June 4, 1981, to McKIBBEN MOTOR SERVICE, INC., Cincinnati, OH, authorizing, respectively, the transportation, over irregular routes, of containers and container ends, and

materials, equipment, and supplies used in the manufacture, sale and distribution of containers (except commodities in bulk), between points in GA, IL, IN KY, MI, OH, PA, TN, WV, and WI, and automobile parts, and materials, equipment, and supplies used in the manufacture and distribution of automobiles and automobile parts, between points in the U.S., under continuing contract(s) with Ford Motor Company, of Dearborn, MI. Representatives: James R. Stiverson, 1396 W. Fifth Ave., Columbus, OH, 43212; Thomas J. Westerfield, 1700 Carew Tower, Cincinnati, OH 45202 (Transferee), and James Duvall, 220 W. Bridge St., Dublin, OH 43017 (Transferor).

For the following, please direct status calls to Team 4 at 202-275-7669.

Volume No. OP4-FC-218

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing.

MC-FC-81271, filed March 2, 1983. By decision of April 11, 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 ALL MAX TRUCKING CO. INC., Jersey City, NJ, of Certificate No. MC-61896, issued August 12, 1960, to BERGENFIELD MOVING & STORAGE CO. INC., New Milford, NJ, authorizing the transportation of *household goods*, between points in Passfac, and Bergen Counties, NJ, on the one hand, and, on the other, points in NY. Representative: Max Rivera, 4000 W. Side Ave., North Bergen, NJ 07047.

MC-FC-81293. By decision of April 11, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. Part 1181, Review Board Number 2 approved the transfer to R.M.T. COMPANY, Billings, MT, of Certificate No. MC-150166 (Sub-No. 1), issued September 16, 1981, to RONALD M. LUND, SIMON C. RYAN, JR., LLOYD W. JOHNSON, and FRANK A. LEKSE, d.b.a. ROCKY MOUNTAIN TRUCKING COMPANY, Billings, MT, authorizing the transportation of *meats, meat products, and meat by-products and articles distributed by meat packinghouses as described in Sections A and C of Appendix 1 to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766*, between points in Yellowstone County, MT, on the one hand, and, on the other, points in the U.S. Representative: Charles A. Murray, Jr., 2822 Third Ave., No., Billings, MT 59101, (406) 252-4165, for both transferee and transferor.

Volume No. OP4-FC-223

By the Commission, Review Board No. 2, Members Carleton, Williams, and Ewing. (Member Williams not participating.)

MC-FC-81320, filed March 18, 1983. By decision of March 11, 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 WILLIAM KIRK SHAFFER, d.b.a. SHAFFER OILFIELD SERVICE, of Rock Springs, WY of Certificate No. MC-154116, issued October 5, 1981, to WILLIAM H. BILLINGSLEY, BARBARA L. BILLINGSLEY, WILLIAM M. BILLINGSLEY AND ALLAN R. BILLINGSLEY, d.b.a. A-B HOTSHOT SERVICE (FIRST SECURITY BANK OF ROCK SPRINGS, SECURED CREDITOR) of Rock Springs, WY, authorizing the transportation of Mercer commodities, between points in CA, ID, MT, ND, SD, WY, UT, CO, NE, KS, NM, OK, TX, and NV. Representative: William Kirk Shaffer, 506 Fremont, Rock Springs, WY 82901.

MC-FC-81356. By decision of 4-11-83 issued under 49 U.S.C. 10926 and the transfer rules at 49 C.F.R. Part 1181, Review Board Number 2 approved the transfer to GRANT TRUCKING, INC., Sacramento, CA, of Permit No. MC-164487, issued March 2, 1983, to JAMES R. HUSBANDS, d.b.a. JAMES R. HUSBANDS CO., Lebanon, OR, authorizing the transportation of 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 Superior Transportation system, Inc., of Wilsonville, OR. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Ave., Portland, OR 97210. Attorney for applicants.

[FR Doc. 83-10307 Filed 4-18-83; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; 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 Good Brokers. The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and household goods brokers 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** 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** 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 49 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 Commissions'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 transportaion 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 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." 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 5 at (202) 275-7289.

Volume No. OP5-178

Decided: April 8, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 16479 (Sub-7), filed March 30, 1983. Applicant: SUPERIOR EXPRESS, INC., 210 W. Third St., Waterloo, IL 62298. Representative: J. J. Schilling (same address as applicant), (618) 939-6015. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IL and MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 113059 (Sub-16), filed March 29, 1983. Applicant: KELLER TRANSPORT, INC., Route 9, Katy Lane, Billings, MT 59101. Representative: F. E. Keller (same address as applicant), (406) 656-1403. Transporting *materials, equipment, and supplies* incidental to or used in (a) the construction, development, and production of natural gas, petroleum, and coal, and (b) the construction and maintenance of highways, and irrigation and power projects, between points in ID, MT, ND, SD, WA, and WY.

MC 165928, filed March 29, 1983. Applicant: R. E. M. TRANSPORT, LTD., 27 Parkwood Dr., St. Stephen, New Brunswick, Canada E3L 2W1. Representative: John C. Lightbody, 30 Exchange St., Portland, ME 04101, 207-773-5651. Transporting (1) *building materials*, and *machinery and equipment*, between ports of entry in the U.S. on the international boundary line between the U.S. and Canada, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2) *lumber and wood products*, between points in the U.S. (except AK and HI).

MC 167118, filed March 30, 1983. Applicant: KANKO BUS LINES, INC., 545 Madison Ave., New York, NY 10022. Representative: Larsh B. Mewhinney, 555 Madison Ave., New York, NY 10022, (212) 838-0600. Transporting *passengers*, in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

Volume No. OP5-180

Decided: April 11, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC 41098 (Sub-105), filed April 5, 1983. Applicant: GLOBAL VAN LINES, INC., One Global Way, Anaheim, CA 92803. Representative: Alan F. Wohlstetter, 1700 K St., NW, Washington, D.C. 20006, (202) 833-8884. Transporting *household goods*, between points in the U.S., under continuing contract(s) with General Mills, Inc., of Minneapolis, MN, and its subsidiaries and divisions.

MC 46518 (Sub-17), filed April 5, 1983. Applicant: BOSTON-BUFFALO EXPRESS, INC., 7200 Fly Road, P.O. Box 207, East Syracuse, NY 13057. Representative: Herbert M. Canter, 305 Montgomery St., Syracuse, NY 13202, (315) 472-8845. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in CT, MA, ME, NH, NY, OH, PA, RI, and VT.

MC 110149 (Sub-15), filed April 5, 1983. Applicant: PAN AMERICAN VAN LINES, INC., P.O. Box 923, Long Beach, CA 90801. Representative: W. C. Fogle (same address as applicant), (213) 537-2630. Transporting *general commodities* (except classes A and B explosives and commodities in bulk), between points in the U.S., under continuing contract(s) with Hughes Aircraft Company, of El Segundo, CA.

MC 126018 (Sub-7), filed March 28, 1983. Applicant: PREM-PAK, INC., One Exeter Road, North Hampton, NH 03862. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108, (617) 742-3530. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in ME, NH, VT, MA, RI, CT, DE, FL, GA, MD, NJ, NY, NC, OH, PA, SC, and VA.

MC 140889 (Sub-33), filed April 4, 1983. Applicant: FIVE STAR TRUCKING, INC., 1638 Pioneer Way, El Cajon, CA 92020. Representative: Ignatius B. Trombetta, One Public Square, No. 1001, Cleveland, OH 44113, (216) 589-0448. Transporting (1) *metal products*, and (2) *plastic products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Bud Industries, Inc., of Willoughby, OH.

MC 142239 (Sub-13), filed March 29, 1983. Applicant: NEBRASKA COAST, INC., 3125 So. 11th St., Council Bluffs, IA 51501. Representative: James F. Crosby, 7363 Pacific Street, Suite 210B, Omaha, NE 68114, (402) 397-9900. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in IA, KS, MN, MO, NE, and SD, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 143179 (Sub-31), filed April 4, 1983. Applicant: FUTURE FOAM, INC., P.O. Box 1017, Omaha, NE 68101. Representative: Foster L. Kent (same address as applicant), (712) 323-9124. 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 Marine Cooperative Association, of Portland, OR.

MC 150889 (Sub-1), filed March 28, 1983. Applicant: CONTINENTAL ARMORED TRANSPORT, INC., P.O. Box 3004, Seattle, WA 98114. Representative: David C. White, 2400 SW Fourth Ave., Portland, OR 97201, (503) 226-6491. Transporting *coin, currency, checks, drafts, securities, negotiable instruments, and other valuables*, between points in ID, OR, and WA.

MC 159048 (Sub-2), filed March 23, 1983. Applicant: MYRICK TRUCKING CO., P.O. Box 145, Savanna, IL 61074. Representative: Perry G. Myrick, 1424 Chicago Ave., Savanna, IL 61074, (815) 273-4162. Transporting *general commodities* (except classes A and B explosives and household goods), between points in AL, AR, IN, IA, KS, KY, MI, MN, CO, MO, LA, OH, PA, TN, WI, IL, NY, WV, FL, GA, NE, OK, and TX.

MC 162288 (Sub-1), filed April 4, 1983. Applicant: LAWRENCE J. GIUSTO, d.b.a. LIBERTY TRANSPORTATION, 13501 Oakland Drive, Burnsville, MN 55337. Representative: Stanley C. Olsen, Jr., 5200 Willson Road, Suite 307, Minneapolis, MN 55424, (612) 927-8855. 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 165659, filed April 5, 1983. Applicant: ROBERT F. DALE, d.b.a. DALE TRANSPORTATION, 6018 Laurel St., Raytown, MO 64133. Representative: Robert F. Dale (same address as applicant), 816-358-0818. Transporting *paper and related products*, between Kansas City, MO, on the one hand, and, on the other, points in KS, under continuing contract(s) with Bowater Computer Forms, Inc., of Lee's Summit, MO.

MC 166038 (Sub-1), filed April 4, 1983. Applicant: AMERICAN TARA CORPORATION, 5667 New Peachtree Rd., Atlanta, GA 30341. Representative: Bruce E. Mitchell, Suite 520, 3390 Peachtree Rd., N.E., Atlanta, GA 30326, 404-262-7855. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. under continuing contract(s) with Texas Stock Tab of Coppell, TX; DSI Forms, Inc., of Palatka, FL; Computer Business Forms, Inc., of Greensboro, NC; Unified Data Products Corporation of Vermont, of Grafton, VT; Better Business Forms, Inc., of Pinellas Park, FL; and Office Electronics, Inc., of Oakbrook, IL.

MC 166339, filed April 4, 1983. Applicant: WINN BARTZ TRUCKING, INC., 225 Railroad St., Reedsburg, WI 53959. Representative: James A. Spiegel, Olde Towne Office Park, 6333 Odana Rd., Madison, WI 53719, (608) 273-1003.Transporting *metal products and foundry materials and supplies*, between points in the U.S. (except AK and HI), under continuing contract(s) with Grede Foundries, Inc., of Wauwatosa, WI, and Alabama By-Products Corporation, of Birmingham, AL.

MC 166369, filed March 28, 1983. Applicant: R & R FERTILIZER, INC., R.R. #1, Box 180, St. Ansgar, IA 50472. Representative: James M. Hodge, 3730 Ingersoll Ave., Des Moines, IA 50312, (515) 274-4985.Transporting (1) *fertilizer and anhydrous ammonia*, between points in IA, IL, KS, MN, MO, NE, and WI, and (2) *metal products, machinery, equipment and lumber and wood products*, between points in Cerro Gordo, Worth and Wright Counties, IA, Clay County, KS and Elkhart County, IN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 166858, filed March 17, 1983. Applicant: MAX G. McCULLEN TRUCKING COMPANY, INC., Route 1, Box 292A, Newton Grove, NC 28366. Representative: Connie Talton, Route 1, Box 471-A1, Dudley, NC 27530, (919) 594-0065.Transporting (1) *furniture and fixtures*, between points in Wayne County, NC, on the one hand, and, on the other, points in CA, OR, VT, WA, TX, AZ, CO, ID, MT, NV, NM, and WY, and (2) *farm and heavy equipment*, between points in Sampson County, NC, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 167219, filed April 4, 1983. Applicant: ROBERT L. BIRD, Rt. Box 168, Sheridan, AR 72150. Representative: Horace Fikes, Jr., P.O. Box 5632, Pine Bluff, AR 71611, (501) 536-8378.Transporting *forest products, lumber and wood products*, between points in Dallas and Grant Counties, AR, on the one hand, and, on the other, points in AL, KS, LA, MS, MO, OK, and TX.

The following volume was incorrectly published in the **Federal Register** on April 7, 1983, (48 FR 15198) under the fitness-only guidelines, and are being republished under the non-fitness guidelines to reflect this Notice of Correction.

Volume No. OP2-155

By the Commission Review Board No. 3, Members Krock, Joyce, and Dowell. (Member Krock not participating.)

MC 263 (Sub-245), filed March 18, 1983. Applicant: GARRETT FREIGHTLINES, INC., P.O. Box 4048, Pocatello, ID 83201. Representative: Bruce A. Bullock, One Woodward Ave.— 26th Fl., Detroit, MI 48226, 313-496-3534.

MC 6992 (Sub-25), filed March 22, 1983. Applicant: AMERICAN RED BALL TRANSIT COMPANY, INC., 1335 Sadlier Circle, East Dr., Indianapolis, IN 46239. Representative: John F. Spickelmier, (same address as applicant), 317-353-8331.

MC 87113 (Sub-32), filed March 22, 1983. Applicant: WHEATON VAN LINES, INC., 8010 Castleton Rd., Indianapolis, IN 46250. Representative: Alan F. Wohlstetter, 1700 K St., NW., Washington, DC 20006, 202-833-8884.

MC 141002 (Sub-3), filed March 9, 1983. Applicant: ARNEL COACH LINES, INC., 455 Georgia Ave., Atlanta, GA 30312. Representative: Robert E. Born, 1447 Peachtree St., NE., Suite 508, Atlanta, GA 30309, 404-892-8020.

MC 141652 (Sub-54), filed March 21, 1983. Applicant: ZIP TRUCKING, INC., P.O. Box 6126, Jackson, MS 39208. Representative: Paul M. Daniell, Atlanta Gas Light Towers, Suite 1200, 235 Peachtree St., NE., Atlanta, GA 30303, 404-522-2322

MC 151193 (Sub-39), filed March 18, 1983. Applicant: PAULS TRUCKING CORPORATION, 286 Homestead Ave., Avenel, NJ 07001. Representative: Michael A. Beam, (same address as applicant), 201-499-3869.

MC 156092 (Sub-1), filed March 7, 1983. Applicant: MAGNUM HAULERS, INC., 515 State Fair Blvd., Syracuse, NY 13204. Representative: Martin R. Martino, 333 So. Glebe Rd., Arlington, VA 22204, 703-979-1627.

MC 160393 (Sub-1), filed March 16, 1983. Applicant: JIM MILLER TRUCKING, INC., 644 E. Slater, Marshall, MO 65340. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062, 214-255-6279

MC 163613 (Sub-1), filed March 23, 1983. Applicant: GIBSON TRANSPORATION, INC., Box 121, Onarga, IL 60955. Representative: Edward D. McNamara, Jr., 907 South Fourth, P.O. Box 5039, Springfield, IL 62705, 217-528-8476.

MC 164013 (Sub-2), filed March 7, 1983. Applicant: MIKE BRUA TRUCKING, 1114 Milton Ave., Worthington, MN 56187. Representative: Mike Brua, (same address as applicant), 507-372-2693.

MC 165382 (Sub-1), filed March 10, 1983. Applicant: MO-TRAN BUS LINES, INC., 104 North Clark St., Moberly, MO 65270.Representative: William L. Fairbank, 2400 Financial Center, Des Moines, IA 50309, 515-282-3525.

MC 166693, filed March 9, 1983. Applicant: AMERICAN VAN LINES, INC., 468 Wild Ave., Staten Island, NY 10314. Representative: Larry Chirco, (same address as applicant), 212-494-8000.

[FR Doc. 83-10309 Filed 4-18-83; 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 Four at (202) 275–7669.

Volume No. OP4–225

Decided: April 12, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell.

MC 124167 (Sub-3), filed March 25, 1983. Applicant: READY BUS LINE CO., P.O. Box 100, County Hwy 6, La Crescent, MN 55947. Representative: James R. 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 charter and special transportation.

MC 144296 (Sub-2), filed March 21, 1983. Applicant: LEWIS BUS LINES INC., 1257 Gordon Hwy, P.O. Box 1041, Augusta, GA 30903. Representative: Eugene Talmadge Lewis, (same address as applicant) (404) 722–0417. 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.

For the following, please direct status calls to Team 5 at 202–275–7289.

Volume No. OP5–179

Decided: April 8, 1983.

By the Commission, Review Board No. 3, Members Krock, Joyce and Dowell.

MC 116248 (Sub-12), filed March 30, 1983. Applicant: MARIANNA COACH LINES, INC., 1707 Washington St., Paducah, KY 42001. Representative: William L. Willis, McClure Bldg., Suite 702, Frankfort, KY 40601 (502) 227–7384. 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 163199 (Sub-1), filed March 28, 1983. Applicant: SIMPSON TRANSPORT, INC., RFD 1 Box 541, Bristol, NH 03222. Representative: William L. Simpson, (same address as applicant) (603) 744–8797. 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 167129, filed March 29, 1983. Applicant: CHARLES MICHAEL RHODES, d.b.a. ROADS FREIGHT BROKERS, 3750 W. McDowell, Phoenix, AZ 85009. Representative: Andrew V. Baylor, 337 East Elm St., Phoenix, AZ 85012 (602) 274–5146. To operate as a *broker* of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

Volume No. OP5–181

Decided: April 11, 1983.

By the Commission, Review Board No. 1, Members Parker, Chandler, and Fortier. (Member Parker not participating.)

MC 89578 (Sub-6), filed April 4, 1983. Applicant: ARTHUR BRUNDAGE, INC., 46 Orchard St., P.O. Box 67, Oneonta, NY 13820. Representative: Jeremy Kahn, Suite 733, 1511 K St. NW., Washington, DC 20005 (202) 783–3525. Transporting *passengers*, in charter and special operations, beginning and ending at points in NY and PA, and extending to points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 167199, filed April 4, 1983. Applicant: DAVID J. GRIFFITH, d.b.a. D & K TRUCKING, 319 Ernest St., P.O. Box 408, Donald, OR 97020. Representative: David J. Griffith (same address as applicant), (503) 678–5405. 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 167208, filed April 4, 1983. Applicant: DIXIE TRAVEL AND CHARTER BUS SERVICE, INC., 562 Oriole Blvd., P.O. Box 203, Duncanville, TX 75116. Representative: Jimmy Bess (same address as applicant), (214) 780–1538. Transporting *passengers*, in charter operations, beginning and ending at Dallas, TX, and extending to points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter transportation.

MC 167218, filed April 4, 1983. Applicant: ROBERT GERALD DESMOND, d.b.a. WIND–SONG LIMOUSINE SERVICE, P.O. Box 1467, 9 Chadwick Place, Biddeford, ME 04005. Representative: Robert Gerald Desmond (same address as applicant), (207) 282–3427. Transporting *passengers*, in charter and special operations, beginning and ending in Biddeford, ME, and extending to points in NH and MA.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 167229, filed April 4, 1983. Applicant: C T U CORP., 645 Joliet St., West Chicago, IL 60185. Representative: James C. Hardman, 33 N. LaSalle St., Chicago, IL 60602, (312) 236–5944. Transporting *passengers*, in charter and special operations between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 167238, filed April 5, 1983. Applicant: BAR J TRUCK LINES, INC., 254 White Cedar, Houston, TX 77015. Representative: John W. Carlisle, P.O. Box 967, Missouri City, TX 77459, 713–437–1768. 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), between points in the U.S. (except AK and HI); (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); (3) as a broker of general commodities (except household goods), between points in the U.S. (except AK and HI); (4) *used household goods* for the account of the United States Government incidental to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S. (except AK and HI); and (5) *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).

[FR Doc. 83-10310 Filed 4-18-83; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Approved Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notices of approved exemptions.

SUMMARY: The motor carriers shown below have been granted exemptions pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 1343*, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

DATES: The exemptions will be effective on May 19, 1983. Petitions for reconsideration must be filed by May 9, 1983. Petitions for stay must be filed by April 29, 1983.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275–7977.

SUPPLEMENTARY INFORMATION: For further information, see the decision(s) served in the proceeding(s) listed below. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th and Constitution Ave., NW., Washington, D.C. 20423; or call (202) 289–4357 in the D.C. metropolitan area; or (800) 424–5403 Toll-free outside the D.C. area.

Agatha L. Mergenovich,
Secretary.

MC–F–15027, MIDALGLANTIC COAST DELIVERY SYSTEMS, INC.—Control—Exemption—Common Cargo Corporation. Addresses: Send pleadings to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423 and (2) Petitioner's representative: Bruce J. Robbins, Robbins & Newman, P.C., 18 East 48th Street, New York, NY 10017. Pleadings should refer to No. MC–F–15027. Decided: April 12, 1983. Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11343(a), the acquisition of control of Command Cargo Corporation (MC–141684) by Midalglantic Coast Delivery Systems, Inc. (Midalglantic) (MC–105369), and, in turn, Raymond Taibi and Herschel Frankel, who jointly control Midalglantic, and James Mc Diarmid, who will acquire a portion of the common stock of Midalglantic.

By the Commission, Division 1, Commissioners Andre, Taylor and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

MC–F–15067, PETERSON EXPRESS, INC.—Purchase Exemption—THERMO TRANSPORT, INC. Address: Send pleadings to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423, and (2) Petitioner's Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Pleadings should refer to No. MC–F–15067. Decided: April 12, 1983. Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C 11343, the purchase by Peterson Express, Inc. (Peterson) (MC–162104), and, in turn, Walter R. Key, Richard White, and Douglas A. Peterson, who jointly control Peterson, of Permit No. MC–145359 (Sub-No. 43) of Thermo Transport, Inc.

By the Commission, Division 1, Commissioners Andre, Taylor, and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

MC–F–15093, OZELLA HARRINGTON—Continuance in Control Exemption—E. J. DICKIE TRUCKING COMPANY and ECHO TRUCKING COMPANY. Addresses: Send pleadings to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423, and (2) Petitioner's representatives: Lex J. Smith and Richard L. Sallquist, Evans, Kitchel & Jenckes, P.C., 2600 North Central Ave., Suite 1900, Phoenix, AZ 85004. Pleadings should refer to No. MC–F–15093. Decided: April 12, 1983. Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11343(a), the continuance in control by Ozella Harrington, a sole proprietor (No. MC–109515), of E. J. Dickie Trucking Company (No. MC–77340) and Echo Trucking Company (No. MC–135513). By

the Commission, Division 1, Commissioners Andre, Taylor, and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

MC-F-15097, PST, INC.—Purchase Exemption—SUNSET EXPRESS CORP. Addresses: Send pleadings to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423, and (2) Petitioner's representative: Michael J. Norton, 1905 South Redwood Road, Salt Lake City, UT 84104. Pleadings should refer to No. MC-F-15097. Decided: April 12, 1983. Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirements of prior review and approval under 49 U.S.C. 11343, the purchase by PST, Inc., (No. MC-141532), of all of the certificates and permits of Sunset Express Corp. (No. MC-148737). By the Commission, Division 1, Commissioners Andre, Taylor, and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

MC-F-15106, ROBERT H. FATES—Continuance in Control Exemption—R. C. SERVICE, INC., and ALLEN FREIGHT LINES, INC. Addresses: Send pleadings to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423, and (2) Petitioner's representative: Thomas M. O'Brien, Sullivan & Associates, Ltd., 180 N. Michigan Avenue, Suite 1700, Chicago, IL 60601. Pleadings should refer to No. MC-F-15106. Decided: April 11, 1983. Under 49 U.S.C. 11343(e), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11343(a), the continuance in control by Robert H. Fates of R.C. Service, Inc. (No. MC-152082) and Allen Freight Lines, Inc. (No. MC-164771), upon the latter becoming a motor carrier subject to the jurisdiction of the Commission. By the Commission, Division 2, Commissioners Gradison, Taylor, and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

[FR Doc. 83-10304 Filed 4-18-83; 8:45 am]
BILLING CODE 7035-01-M

[No. MC-F-15232]

Motor Carriers; Consolidated Freightways, Inc., et al.—Continuance in Control Exemption—CF Arrowhead Services, Inc., et al.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Pursuant to 49 U.S.C. 11343(e), added by section 21 of the Bus Regulatory Reform Act of 1982, Pub. L. 97-261 (September 20, 1982), Consolidated Freightways, Inc. (CFI), a noncarrier holding company, seeks an exemption from the requirement under section 11343 of prior regulatory approval for its continuance in control of its motor carrier subsidiaries, Consolidated Freightways Corporation of Delaware (CFCD) (No. MC-42487), Canadian Freightways Limited (CFL) (No. MC-116975), and Canadian Freightways Eastern Limited (CFEL) (No. MC-76036), along with CF Arrowhead Services, Inc. (Arrowhead), Con-Way Eastern Express, Inc. (Eastern), Con-Way Central Express, Inc. (Central), and Con-Way Western Express, Inc. (Western), which have applications for motor carrier authority pending in Nos. MC-164299, MC-165442, MC-165377, and MC-165436, respectively. Currently, CFDC is a wholly owned subsidiary of CFI, CFL is a wholly owned subsidiary of CFDC, CFEL is a wholly owned subsidiary of CFL, and Arrowhead, Eastern, Central, and Western are wholly owned noncarrier subsidiaries of CFI.

CF Land Transportation, Inc. (CFLT), a newly formed noncarrier subsidiary of CFI, seeks an exemption from the requirement under section 11343 of prior regulatory approval for its control of CFCD (and indirectly of CFL and CFEL), and its indirect control of Arrowhead, Eastern, Central, and Western after they are certificated, through its newly formed noncarrier subsidiary, CF Land Services, Inc. (CFLS).

CFLS seeks an exemption from the requirement under section 11343 of prior regulatory approval for its control of Arrowhead, Eastern, Central, and Western after they are certificated.

The corporate realignment of CFI and its affiliates will occur subsequent to the certification of Arrowhead, Eastern, Central, and Western, and prior to the end of 1983.

CF Forwarding, Inc. (CFF) (No. FF-567) is a subsidiary of CFCD. Because the provisions of 49 U.S.C. 11323(a) prohibit a person in control of a surface freight forwarder from thereafter acquiring additional motor carriers, CFI and its affiliate CFCD have divested themselves of control by placing CFF's stock in an independent voting trust, effective April 6, 1983. Upon certification of Arrowhead, Eastern, Central, and Western, the voting trust will expire by its own terms and CFF's stock will be conveyed to CFI.

A grant of the exemptions sought will be conditioned upon the issuance to Arrowhead, Eastern, Central, and Western of the certificates they seek.

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, DC 20423, and (2) Petitioners' representatives: Eugene T. Liipfert, Mark J. Andrews, 1660 L Street, N.W.—Suite 1100, Washington, DC 20036. Comments should refer to No. MC-F-15232.

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 petitioners' representatives. In the alternative, the petition for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

Decided: April 13, 1983.

By the Commission, Heber, P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-10305 Filed 4-18-83; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Proposed Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemptions.

SUMMARY: The motor carriers shown below seek exemptions pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 11343*, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

DATES: Comments must be received within 30 days after the date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275-7977.

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.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

Volume No. OP3–156

Decided: April 12, 1983.

SOUTHERN IDAHO TRANSPORT, INC.—Purchase Exemption—SHOEMAKER TRUCKING COMPANY (LOREN WETZEL, Trustee-in-Bankruptcy) MC–F–15175, Southern Idaho Transport Inc., (No. MC–136832) seeks an exemption from the requirement under section 11343 of prior regulatory approval for its purchase of a portion of the motor carrier operating rights of Shoemaker Trucking Company, specifically those rights in No. MC–138875 [Sub-No. 312X(16)(e)] and those underlying rights in No. MC–138875 [Sub-No. 211(f)]. Send comments to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423, and (2) Petitioner's representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. Comments should refer to No. MC–F–15175.

HAMRIC TRANSPORTATION, INC.—Purchase Exemption—SHOEMAKER TRUCKING COMPANY (Loren Wetzel, Trustee-in-Bankruptcy). MC–F–15181, Shoemaker Trucking Company (MC–138875), and Hamric Transportation, Inc., (MC–142831) seek an exemption from the requirement under section 11343 of prior regulatory approval for acquisition by Hamric of a portion of the motor carrier operating rights of Shoemaker, i.e. Certificate No. MC–138875 (Sub-No. 282) authorizing the transportation of such products as are distributed by farm and hardware supply stores (except commodities in bulk) between points in the United States and the facilities of Big R Stores located in California, Colorado, Iowa, Idaho, Kansas, Minnestoa, Missouri, Montana, North Dakota, Nebraska, Nevada, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming. Addresses: Send comments to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423, and (2) Petitioner's representative: David E. Wishney, 601 West Hays Street, Boise, ID 83701. Comments should refer to No. MC–F–15181.

Volume No. OP1–136

Decided: April 13, 1983.

MOTORCAR TRANSPORT COMPANY—Merger Exemption—AUTOMOBILE CARRIERS, INC., MC–F–15219, Motorcar Transport Company (MTC) (MC–60470), Automobile Carriers, Inc. (ACI) (MC–113436), and Leaseway Transportation Corp., a non-carrier holding and management company which controls MTC and ACI, seek an exemption from the requirement under section 11343 of prior regulatory approval for the merger of all the interstate operating rights and property of ACI into MTC, for management, control, and operation. ACI's authority to be merged into MTC generally enables the irregular-route motor common carrier transportation of (1) automobiles, trucks, buses, and related commodities, in initial or secondary movements, in truckaway service, (a) from Flint, MI, to Lincoln, NE, and points in 11 specified eastern and mideastern States, subject to certain restrictions, (b) between Flint, MI, on the one hand, and on the other, Lincoln, NE, and points in 11 specified eastern and mideastern States, subject to certain restrictions, and (c) from Janesville, WI, to points in the Lower Peninsula of MI; and (2) motor vehicles, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of a named shipper or its dealers. Send comments to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423, and (2) Petitioner's representatives: J. Andrew Kundtz, 1100 National City Bank Bldg., Cleveland, OH 44114, or Peter A. Greene, 1920 N St., N.W., Washington, D.C. 20036. Comments should refer to No. MC–F–15219.

Volume No. OP4–F–227

Decided: April 13, 1983.

BIG RED REFRIGERATION, INC.—purchase exemption—UNIVERSE COMPANY, INC., MC–F–15204, Big Red Refrigeration, Inc. (MC–134724) seeks an exemption from the requirement under section 11343 of prior regulatory approval for its purchase of a portion of the operating authority of the Universe Company, Inc., specifically MC–136816 (lead) and Sub-Nos. 1, 6, 7, 8, 9, 10X (except para. 3), and 12. Send comments to: (1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, DC 20423, and (2) Petitioner's representative: Arlyn L. Westergren, 9202 West Dodge Road, Suite 201 Omaha, NE 68114.

[FR Doc. 83-10308 Filed 4-18-83; 8:45 am]

BILLING CODE 7035-01-M

[PO2-154]

Motor Carriers; Permanent Authority Decisions; Corrections

The following application was incorrectly published under the non-fitness guidelines in the Federal Register of April 7, 1983, Volume No. OP2–154 at 48 FR 15200.

In this application, applicant was only required to prove its fitness, willingness and ability to perform the requested service. This application may be protested only on the ground that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations. Any verified statement in opposition should be filed within 45 days from the publication of this correction. MC–28462 Sub–14, filed March 2, 1983. Applicant: DENVER COLORADO SPRINGS PUEBLO MOTOR WAY, INC., 1055 19th St., Denver, CO 80202. Representative: G. W. Hanthorn, 1500 Jackson St., Dallas, TX 75201, (214) 655–7937.

By the Commission, Review Board No. 3, Members Krock, Joyce, and Dowell (Member Krock not participating).

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-10306 Filed 4-18-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30160]

Rail Carriers; The Baltimore and Ohio Railroad Co.—Operation of the Properties of Western Maryland Railway Co.; Exemption

April 12, 1983.

The Baltimore and Ohio Railroad Company (B&O) and Western Maryland Railway Company (WM) jointly filed a notice of exemption, pursuant to 49 CFR 1180.2(d)(3) concerning an agreement under which B&O will operate the properties of WM, in the name and for the account of B&O. B&O and WM are controlled by The Chesapeake and Ohio Railway Company and the three roads, together with their subsidiaries, are operated under common control as the Chessie System Railroads.

By operating WM's properties as a part of B&O's system, many inefficiencies will be eliminated. Improved utilization of personnel and facilities will result from eliminating duplications at common service points. Routing of present WM traffic will be improved, with a resultant reduction in

existing locomotive and track requirements. In addition, the proposed transaction will eliminate (1) the need for separate accounting records and interline transactions for WM with foreign railroads, (2) the filing of separate tariffs and reports with governmental bodies, and (3) the use of intercompany billing for management and supervisory services and equipment usage.

This transaction is within a corporate family and will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. These conclusions are especially applicable where, as here, a long-standing common control relationship exists between the involved carriers. Therefore, the proposed transaction is of the type specifically exempted from prior review and approval by 49 CFR 1180.2(d)(3).

As a condition to use of the exemption, any employee affected by the transaction shall be protected by the conditions set forth in *New York Dock Ry.-Control-Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-10303 Filed 4-18-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal Supplemental Compensation; Change 2 to General Administration Letter No. 2-83

Pub. L. 98-13 made effective Part A of Title V of the Social Security Act Amendments of 1983 which amends the Federal Supplemental Compensation (FSC) Act of 1982 to extend the FSC program to September 30, 1983, and to provide additional weeks of benefits to prior FSC recipients. These additional weeks of FSC benefits are payable for weeks beginning on or after April 1, 1983. The Department of Labor issued implementing instructions to all State employment security agencies with Change 2 to General Administration Letter Number 2-83. Change 2 is published below.

Dated: April 12, 1983.

Albert Angrisani,

Assistant Secretary of Labor.

U.S. Department of Labor

Employment and Training Administration

Classification: UI

Correspondence Symbol: TEUMI

Date: April 21, 1983.

Expiration Date: November 30, 1983.

Directive: General Administration Letter No. 2-83, Change 2

To: All State Employment Security Agencies

From: Royal S. Dellinger, 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 the enactment of H.R. 2369 (Pub. L. 98-13) making effective part A of Title V of the Social Security Amendments of 1983.

2. *Reference.* Pub. L. 98-13, part A of Title V of the Social Security Amendments of 1983 (H.R. 1900).

3. *Background.* GAL 2-83 and GAL 2-83, Change 1, provided instructions for implementing the FSC program in all States. Under the FSC Act of 1982, as amended, eligible workers receive 65 percent of their entitlement to regular benefits up to the maximum FSC payable in the State, either 16, 14, 12, 10 or 8 weeks. The expiration date of the program was for weeks of unemployment beginning after March 31, 1983.

H.R. 2369 amended the FSC Act by making effective part A of Title V of the Social Security Amendments of 1983 (H.R. 1900) which changes the maximum amount of FSC payable in all States and extends the expiration date of the FSC program to September 30, 1983. The amendments also provide additional weeks of FSC benefits to individuals to whom FSC was first payable for weeks of unemployment beginning before April 1, 1983, and for a phase-out of FSC benefits after September 30, 1983, allowing claimants to receive up to 50 percent of their remaining entitlement to FSC benefits after September 30, 1983.

4. *Effect of Amendment on prior issuances.* The attached instructions reflect the later amendments to the FSC Act of 1982. Instructions for implementing the amendments are effective for weeks beginning after March 31, 1983, and weeks beginning before the effective date of the amendments will be determined according to GAL 2-83, as amended by GAL 2-83, Change 1. Changes were also made to instructions for waiver of overpayments in order to insure consistency among Federal programs.

Part II of the attachment to GAL 2-83, as amended by Change 1, contains procedures for implementing FSC. Changes to Part II are identified by Section and Subsection. Sections and Subsections uncharged by this issuance will still apply to claims for and payment of FSC. There are no changes to Part III of the attachment.

5. *Action Required.* Administrators should provide the above information and attached instructions to appropriate staff.

6. *Inquiries.* Direct questions to the appropriate Regional Office.

7. *Attachment.* Instructions for implementing the amendments to the Federal Supplemental Compensation Program.

FSC Amendments Effected by H.R. 2369 to the Federal Supplemental Compensation Act of 1982; Implementing Instructions

Part I. Explanation of the FSC Amendments in H.R. 2369

A. Maximum FSC Payable.

1. *Maximum FSC Payable.* The number of weeks of FSC payable in a State—for weeks which begin after March 31, 1983—are 14, 12, 10 or 8 weeks. A State's extended benefit status is no longer a criterion in determining the number of weeks payable in a State. The State's extended benefit trigger rate (i.e., the most recent 13-week insured unemployment rate) determines the maximum FSC payable. Beginning on April 3, 1983, each State will begin a new FSC benefit period and establish the maximum payable to each FSC claimant as follows:

a. *14 weeks.* States in a "6-percent period" pay up to 14 weeks of FSC. A 6-percent period 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 6-percent period must last at least 4 weeks and may begin as early as the first week which begins after March 31, 1983, (i.e., April 3, 1983).

b. *12 weeks.* States in a "5-percent period" pay up to 12 weeks of FSC. A 5-percent period begins the third week after the first week the State's extended benefit indicator rate equals or exceeds 5.9 percent but is less than 6.0 percent and ends the third week after the first week in which the State's extended benefit indicator rate drops below 5.0 percent. A State must stay in a 5-percent period for at least 4 weeks, except it will move to a 6-percent period at any time after one week in a 5-percent period. A 5-percent period may begin as early as the first week which begins after March 31, 1983, (i.e., April 3, 1983).

c. *10 weeks.* States in a "4-percent period" pay up to 10 weeks of FSC. A 4-percent period begins the third week after the first week the State's extended benefit indicator rate equals or exceeds 4.0 percent but is less than 5.0 percent and ends the third week after the first week in which the State's extended benefit indicator rate drops below 4.0 percent. A State must stay in a 4-percent period for at least 4 weeks, except it will move to a higher period at any time after one week in a 4-percent period. A 4-percent period may begin as early as the first week which begins after March 31, 1983, (i.e., April 3, 1983).

d. *8 weeks.* The base level of FSC payable is up to 8 weeks. Eight weeks of FSC are payable in States in a "low-unemployment period," i.e., an extended benefit indicator rate of less than 4.0 percent.

e. *Base Maximum.* The FSC amendments specify that notwithstanding the above levels of FSC, the maximum weeks of FSC payable in a State shall not be more than 4 weeks

lower than the maximum FSC payable in the State for the week beginning March 27, 1983.

B. *Computation of Maximum FSC Benefits Payable.* The computation of the maximum FSC payable changes from 65 percent to 55 percent of the total amount of regular compensation (including dependents' allowances) payable, or, if less, the maximum FSC payable in the State after March 31, 1983.

C. *Effect on Prior FSC Recipients.* For individuals to whom FSC was first payable for any week beginning before April 1, 1983, a new maximum amount of FSC payable is determined based on the amount the individual received prior to April 1, 1983, and the maximum payable in the State after March 31, 1983. Such individuals are entitled to the *lesser* of:

1. The maximum payable to the individual as determined under subsection B above, *or*

2. The amount determined under 1. above reduced (but not below zero) by the aggregate amount of FSC paid to such individual for weeks beginning before April 1, 1983, plus the individual's "additional entitlement."

An individual's "additional entitlement" is equal to the lesser of three-fourths of the individual's maximum FSC entitlement determined under 1. above, or the individual's weekly benefit amount times the applicable limit set below:

In the case of weeks during a	The applicable limit is
6-percent period	10
5-percent period	8
4-percent period	8
Low unemployment period	6

D. *Special Rule.* The FSC amendments contain special rules similar to those in the amendments to the FSC program enacted in the Highway Revenue Act, which apply to prior FSC exhaustees, as follows:

1. The period occurring after the date an individual has exhausted his or her entitlement to FSC and before April 3, 1983, shall not be counted in determining the two-year limitation (from the end of the individual's most recent benefit year) on payment of FSC, and

2. 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 related to unemployment compensation which occurs after the date of exhaustion of FSC and before April 3, 1983.

E. *Training.* The FSC amendments provide that FSC shall not be denied to any individual, because of the application of State law relating to availability for work, actively seeking work or refusal of work, for any week the individual is attending training or attending an accredited educational institution on a substantially full-time basis, unless the State agency determines such training or education will not improve the individual's opportunities for employment. The individual must submit such documentation as prescribed by the Secretary of Labor certifying attendance at training or an educational institution.

F. *Effect on TRA.* The amendments also alter the relationship of entitlement to TRA and FSC. The purpose of the amendment is to insure, to the extent possible, that the aggregate amount of UI, EB, TRA and FSC payable is the same as the aggregate amount payable to individuals not entitled to TRA.

G. *Modification of the Agreement.* The Secretary of Labor is required, as soon a 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 will be effective with the end of the last week which ends on or before such three week period (i.e., *the week ending March 26, 1983*).

H. *Effective Dates.* The FSC amendments are effective beginning with the first week which begins after March 31, 1983, (i.e., April 3, 1983). The FSC program terminates for new claims filed for any week beginning on or after September 30, 1983. Individuals who have not exhausted their FSC entitlement on September 30, 1983, when the program expires are eligible to receive up to 50 percent of their remaining FSC entitlement, if they received FSC for a week beginning before October 1, 1983.

Part II. Changes to Part II of the Attachment to GAL 2-83

A. *Section A, "Definitions".*

A new subsection 7 is added to Section A, *Definitions*, to read as follows:

7. "Title V" means the amendments made to the FSC Act of 1982 by H.R. 2369 making effective part A of Title V of the Social Security Amendments of 1983 (H.R. 1900).

B. *Section B. "Beginning and Ending of the FSC Program"*

B. *Section B, Beginning and Ending of the FSC Program,* is amended to read as follows:

For States which entered into a signed agreement by September 11, 1982, an FSC period of eligibility began September 12, 1982. The earliest compensable week for which FSC was payable was the week ending September 18, 1982.

For States which entered into agreements after September 11, 1982, the first compensable week is the first full week beginning on or after the Sunday which followed the date the agreement was signed.

The FSC program is scheduled to end for new claims effective for any week that begins after September 30, 1983. No new FSC claims will be valid for any week of unemployment which begins after that date. Individuals who were paid for a compensable week of unemployment, either partial or total FSC benefits, for a week beginning before October 1, 1983, may receive up to 50 percent of their remaining FSC entitlement for weeks of unemployment beginning after September 30, 1983. Such remaining entitlement is payable for any weeks of unemployment for which the individual is eligible, beginning after September 30, 1983.

The Federal Supplemental Compensation Act of 1983 requires the Secretary of Labor, as soon as practicable after March 29, 1983 to propose to each State a modification to the agreement entered into under the FSC Act to provide for payments of FSC according to 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 (i.e., the week ending on March 26, 1983).

States may terminate the FSC agreement at any time. The FSC period will end 30 days from the date the State notifies the Secretary of its election to terminate the FSC program. No FSC benefits will be payable for weeks which begin after the date the agreement is terminated. The agreement may also be terminated by the Secretary, as provided in the agreement.

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 the individual is claiming FSC *except* that in determining whether this two-year limitation applies, the SESA shall disregard any period of time or times from the date an individual had exhausted his or her entitlement to FSC under the original Federal Supplemental Compensation Act of 1982, as amended, and prior to April 3, 1983.

2. Subsection 8 *Special Eligibility Rule*, is amended to read as follows.

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 the original FSC Act of 1982, as amended, and prior to April 3, 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.

3. The following new subsection 9 is added to Section C.

9. *Training.* No. claimant who is in training or attending an accredited educational institution shall be denied FSC under the provisions of State law relating to availability for work, active search for work or refusals of referral to or an offer of suitable work. This limitation on the denial of FSC because of training applies unless the State determines that the individual is attending an accredited educational institution on less than a substantially full-time basis or the training or attendance at an accredited educational institution will not improve the individual's opportunities for employment.

For purposes of determining the application of this limitation, the State agency shall consider that:

a. Any training or attendance at an accredited educational institution will improve an individual's employment opportunities unless the agency has a preponderance of evidence that the training or attendance is entirely unrelated to employment or is for a vocation for which no employment opportunities exist and are unlikely to become available in the future, and

b. Attendance at an accredited educational institution on a substantially full-time basis is attending courses of study for no less than 12 semester credit hours or the equivalent.

It is the responsibility of the FSC claimant to provide written documentation initially and, upon request of the SESA, from the training or educational institution, regarding the hours of attendance, type and duration of courses or training (including beginning and ending dates), and the accreditation of the educational institution to the State agency.

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 (formerly subsection 2) *"Maximum FSC Payable in a State,"* is amended to read as follows:

a. *Fourteen weeks.* States which are in a "6-percent period" will pay up to 14 weeks (i.e. 14 times the weekly benefit amount) of FSC benefits. To determine a 6-percent period, the State's extended benefit indicator rate is used. A 6-percent period begins the third week after the first week the extended benefit indicator rate equals or exceeds 6.0 percent. A 6-percent period ends the third week after the first week the extended benefit indicator rate drops below 6.0 percent. However, a 6-percent period must last at least four weeks.

b. *Twelve weeks.* States which are in a "5-percent period" pay up to 12 weeks (i.e. 12 times the weekly benefit amount) of FSC. A 5-percent period begins the third week after the first week the State's extended indicator rate equals or exceeds 5.0 percent but is less than 6.0 percent and ends the third week after the first week the State's extended benefit indicator rate drops below 5.0 percent. However, a 5-percent period must last at least 4 weeks, unless the State earlier moves to a 6-percent period. A State may move from a 5.0 percent to a 6-percent period after one week.

c. *Ten weeks.* States which are in a "4-percent period" will pay up to 10 weeks (i.e. 10 times the weekly benefit amount) of FSC. A 4-percent period begins the third week after the first week the State's extended benefit indicator rate equals or exceeds 4.0 percent but is less than 5.0 percent and ends the third week after the first week the State's extended benefit indicator rate drops below 4.0 percent. However, a 4-percent period must last at least 4 weeks, unless the State earlier moves to a 6-percent or 5-percent period . A State may move from a 4-percent to a higher period after one week.

d. *Eight weeks.* States which are in a "low unemployment period" will pay up to 8 weeks (i.e. 8 times the weekly benefit amount) of FSC. A low unemployment period is in effect beginning with the third week after the first week the State's extended benefit indicator rate is less than 4.0 percent. A State may move to a higher unemployment period at any time after one week in a low unemployment period.

e. *Base maximum.* The maximum weeks of FSC payable in a State for any week beginning on or after April 3, 1983 shall not be more than 4 weeks lower than the maximum FSC payable in the State for the week beginning March 27, 1983. For example, if for the week beginning March 27, 1983, 16 weeks of FSC were payable in a State, the lowest maximum payable throughout the extension of FSC program will be 12 weeks, even if the State's extended benefit indicator rate drops below 5.0 percent.

There is no minimum "off" period for States which drop below the 4.0, 5.0 or 6.0 percent indicator rates. For example, a State paying up to 14 weeks of FSC may drop to 12 weeks and the following week, if its extended benefit indicator rate equals or exceeds 6-percent, again will be in a 6-percent period during which up to 14 weeks of FSC are payable.

Determinations of the beginning and ending of 6-percent, 5-percent, 4-percent and low-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.

2. Subsection 2, (formerly subsection 1) *"Accounts"*, and is amended to read as follows.

2. *Accounts.*

a. *Base Amount.* 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:

(1) 55 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

(2) The maximum FSC benefits payable in the State in the week with respect to which eligibility is established.

When the 55 percent of total entitlement is not an even dollar amount, the State may round to an even dollar in accordance with State law, regulations, or practice.

(b) *Redetermined Amount.* In the case of any account from which FSC was payable for a week beginning before April 3, 1983, the SESA must redetermine the amount established in such account. For purposes of determining whether the week for which FSC was first payable began prior to April 3, 1983, the SESA shall use the beginning date of first compensable week of FSC claimed as the first week payable. (Even if no FSC was payable for a week beginning before April 3, 1983, the SESA must make a redetermination under this subsection if the account was established with respect to a week which began before April 3, 1983.)

The redetermined maximum amount of FSC payable to any such individual for weeks beginning on or after April 3, 1983, shall be the *lesser* of:

(1) The amount determined under subsection a, *Base Amount*, above, or

(2) The amount determined under subsection a, *Base Amount*, above, reduced (but not below zero) by the aggregate amount of FSC paid for weeks beginning before April 3, 1983, *plus* the individual's additional entitlement.

An individual's additional entitlement is an amount equal to the *lesser* of—

i. Three-fourths of the amount determined under subsection a, *Base Amount*, above, or

ii. The individual's weekly benefit amount times the applicable limit as follows:

In the case of weeks during a	The applicable limit is
6-percent	10
5-percent	8
4-percent	8
Low-unemployment period	6

States which are in a 4-percent period shall determine additional entitlement at 8 times the individual's weekly benefit amount in all cases where the individual's *Base Amount*, determined under subsection a, above, equals 10 times the weekly benefit amount.

For example, the maximum FSC payable in a State on April 3, 1983, is 14 weeks, and the individual is eligible for the maximum. To compute the maximum payable beginning April 3, 1983, the total amount of FSC paid for weeks beginning before April 3, is deducted from the 14 week maximum payable, and to this product is added the additional entitlement of 10 weeks, which is less than three-fourths of 14. If this amount is less than 14 times the individual's weekly benefit amount (it can be as high as 14 × WBA), the lesser amount is established in the individual's FSC account. As a numerical example, (expressed in weeks), if an individual was paid 11 weeks of FSC for weeks before April 3, the maximum payable to the individual beginning April 3, is 13 weeks of FSC. The individual's 3 weeks of remaining entitlement to FSC plus the 10 weeks of additional entitlement is less than the 14-week maximum payable in the State.

In another case, if an individual was paid 5 weeks of FSC for weeks prior to April 3, the maximum payable to such individual beginning April 3, 14 weeks. The 14-week maximum payable in the State applies because it is less than the individual's remaining entitlement of 9 weeks plus the 10 weeks of additional entitlement.

The tables which follow show the maximum basic and additional entitlement available at each level of FSC.

TABLE 1.—NUMBER OF FSC WEEKS PAYABLE IN STATES WITH IUR 6.0 OR ABOVE: MAXIMUM 14-WEEK [1] ENTITLEMENT; MAXIMUM 10 ADDITIONAL WEEKS

Number of weeks paid before April 3	Number of weeks payable beginning April 3				Total FSC weeks
	Base entitlement	Less prior weeks paid	Additional entitlement	Maximum payable	
(1)	(2)	(3)	(4)	(5)	(6)
0	14	14	10	14	14
1	14	13	10	14	15
2	14	12	10	14	16
3	14	11	10	14	17
4	14	10	10	14	18
5	14	9	10	14	19
6	14	8	10	14	20
7	14	7	10	14	21
8	14	6	10	14	22
9	14	5	10	14	23
10	14	4	10	14	24
11	14	3	10	13	24
12	14	2	10	12	24
13	14	1	10	11	24
14	14	0	10	10	24
15	14	0	10	10	25
16	14	0	10	10	26

[1] This table expresses entitlement in terms of number of weeks paid or payable. The amount established in an individual's FSC account is the applicable duration times the individual's FSC weekly benefit amount.

TABLE 2.—NUMBER OF FSC WEEKS PAYABLE IN STATES WITH IUR 5.0–5.9: MAXIMUM 12-WEEK ENTITLEMENT; MAXIMUM 8 ADDITIONAL WEEKS [1]

Number of weeks paid before April 3	Base entitlement	Number of weeks available beginning April 3			Total FSC weeks
		Less prior weeks paid	Additional entitlement	Maximum payable	
(1)	(2)	(3)	(4)	(5)	(6)
0	12	12	8	12	12
1	12	11	8	12	13
2	12	10	8	12	14
3	12	9	8	12	15
4	12	8	8	12	16
5	12	7	8	12	17
6	12	6	8	12	18
7	12	5	8	12	19
8	12	4	8	12	20
9	12	3	8	11	20
10	12	2	8	10	20
11	12	1	8	9	20
12	12	0	8	8	20
13	12	0	8	8	21
14	12	0	8	8	22
15	12	0	8	8	23
16	12	0	8	8	24

[1] This table expresses entitlement in terms of number of weeks paid or payable. The amount established in an individual's FSC account is the applicable duration times the individual's FSC weekly benefit amount.

TABLE 3.—NUMBER OF FSC WEEKS PAYABLE IN STATES WITH IUR 4.0–4.9: MAXIMUM 10-WEEK ENTITLEMENT; MAXIMUM 8 ADDITIONAL WEEKS [1]

Number of weeks paid before April 3	Number of weeks available beginning April 3				Total FSC weeks
	Base entitlement	Less prior weeks paid	Additional entitlement	Maximum payable	
(1)	(2)	(3)	(4)	(5)	(6)
0	10	10	8	10	10
1	10	9	8	10	11
2	10	8	8	10	12
3	10	7	8	10	13
4	10	6	8	10	14
5	10	5	8	10	15
6	10	4	8	10	16
7	10	3	8	10	17
8	10	2	8	10	18
9	10	1	8	9	18
10	10	0	8	8	18
11	10	0	8	8	19
12	10	0	8	8	20
13	10	0	8	8	21
14	10	0	8	8	22
15	10	0	8	8	23
16	10	0	8	8	24

[1] This tabe expresses entitlement in terms of number of weeks paid or payable. The amount established in an individual's FSC account is the applicable duration times the individual's FSC weekly benefit amount.

TABLE 4.—NUMBER OF FSC WEEKS PAYABLE IN STATES WITH IUR UNDER 4.0: MAXIMUM 8-WEEK [1] ENTITLEMENT; MAXIMUM 6 ADDITIONAL WEEKS

Number of weeks paid before April 3	Number of weeks available beginning April 3				Total FSC weeks
	Base entitlement	Less prior weeks paid	Additional entitlement	Maximum payable	
(1)	(2)	(3)	(4)	(5)	(6)
0	8	0	6	0	0
1	8	7	6	8	9
2	8	6	6	8	10
3	8	5	6	8	11
4	8	4	6	8	12
5	8	3	6	8	13
6	8	2	6	8	14
7	8	1	6	7	14
8	8	0	6	6	14
9	8	0	6	6	15
10	8	0	6	6	16
11	8	0	6	6	17
12	8	0	6	6	18
13	8	0	6	6	19
14	8	0	6	6	20
15	8	0	6	6	21
16	8	0	6	6	22

[1] This table expresses entitlement in terms of number of weeks paid or payable. The amount established in an individual's FSC account is the applicable duration times the individual's FSC weekly benefit amount.

c. *Amount payable for weeks beginning on or after September 30, 1983.* Individuals who were paid FSC benefits, either partial or total, for a week beginning on or before October 1, 1983, are eligible for 50 percent of their remaining FSC entitlement. Such remaining entitlement is payable for weeks of unemployment beginning after September 30, 1983. Accordingly, the SESA must redetermine the maximum FSC payable at 50 percent of the remaining entitlement as of the first week which begins after September 30, 1983.

d. *Notice.* Each individual for whom a determination or redetermination is made shall be given a written notice of such determination or redetermination, with a notice of appeal rights.

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"* is amended to read as follows:

States may begin an extended benefit period after the effective date of the Title V amendments. 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 the FSC account. A new determination of entitlement to FSC is not made since the individual has the same period of eligibility upon which the original FSC entitlement was determined.

Note.—There are no changes to Subsection 5, *Interstate Claimants.*

4. Subsection 6, *"Changes in Account"* is amended to read as follows:

6. *Changes in Account.* The Title V amendments increase the maximum FSC payable to individuals for whom FSC was first payable before April 3, 1983. The increase in the maximum FSC payable depends upon the individual's remaining entitlement to FSC as of April 3, 1983, and the maximum payable in the State. The increase applies to FSC payable for weeks beginning on or after April 3, 1983, and applies to all eligible individuals, including those who had previously exhausted entitlement to FSC. The SESA should issue a redetermination for each claimant, making the appropriate change in any individual's FSC account (see Tables 1 to 4.)

The FSC maximum may also change after April 3 with changes in the extended benefit indicator rate. If an 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 account. A change in the maximum FSC payable will affect individuals first claiming FSC for weeks beginning on or after April 3, 1983. When a State's FSC maximum goes up (for example, from 12 to 14 weeks), the maximum payable to all such FSC recipients is increased. An individual previously entitled to FSC is then eligible for additional weeks of FSC as long as the new maximum does not exceed 55 percent of the individual's regular benefits. When a State's FSC maximum is reduced (for example, from 10 to 8), 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 the old maximum.

For individuals to whom FSC was first payable for any week beginning before April 3, 1983, a change in the maximum FSC payable also will affect such individuals' maximum entitlement to FSC.

Accordingly, whenever the maximum FSC payable increases or decreases in the State, the SESA must determine the effect of the change in the maximum on individuals for whom FSC was first payable prior to April 3, 1983, and make the appropriate change in such individual's accounts.

F. Section F. *Effect of Other Federal Programs on Eligibility for FSC*

Subsection 1, *"Trade Readjustment Allowances (TRA)"* is amended to read as follows.

The Title V amendments alter the relationship of entitlement to TRA and FSC. The amendments provide that the maximum amount of FSC payable to an individual who is also entitled to TRA shall not be reduced by reason of any TRA entitlement except as described below.

If an individual received TRA with respect to any benefit year, the maximum amount of FSC payable for such benefit year shall be reduced (but not below zero) so that (to the extent possible by making such a reduction) the aggregate amount of UI, EB, TRA, and FSC payable with respect to such benefit year does not exceed the aggregate amount which would have been payable had the individual not been entitled to any TRA.

If an individual, who is not a TRA claimant, was originally entitled to 26 weeks UI, 13 weeks EB, and the State triggered on to a 14 week FSC period, the aggregate amount payable to the individual would be 53 weeks of benefits (26 + 13 + 14 = 53). The amendments require that for a similarly situated TRA claimant, the SESA reduce the maximum amount of FSC payable by the amount of TRA received so that the aggregate amount of UI, EB, TRA, and FSC would, for this individual, also not exceed 53 weeks of benefits.

For Example:

		UI	EB	TRA	FSC
Aggregate Amount Payable					(14-Weeks 53
A. 1. Non-TRA Claimant	Weeks	26	13	0	14
	Amount ($100 WBA)	2600	1300	0	1400

		UI	EB	TRA	FSC
5300					
2. TRA Claimant					
	Weeks	26	13	13	1
	Amount	2600	1300	1300	(14-13) 100 (1400-1300)
5300					

The provisions of section 233(d) of the Trade Act of 1974 (relating to reduction of FSC entitlement because of the receipt of TRA in the most recent benefit year) is no longer applicable to determinations of entitlement to FSC made with respect to weeks which begin on or after April 3, 1983

Note.—There are no changes to Subsections 2 through 4, under Section F.

G. Section L. *Fraud and Overpayments.* Subsection 2. *Recovery of Overpayments,* is amended to read as follows,

2. *Recovery of Overpayments.* Each State is authorized to require repayment from individuals who have received any payment of FSC to which they are not entitled (whether fraudulent or non-fraudulent), unless the SESA waives recovery of the overpayment. The SESA may waive recovery of a non-fraudulent overpayment not previously recovered if it determines that—

a. the payment of such FSC benefits was without fault on the part of the individual, and

b. such repayment would be contrary to equity and good conscience.

(1) In determining whether fault exists, the following factors shall be considered:

(a) Whether a statement or representation of a material nature was made by the individual in connection with the application for FSC that resulted in the overpayment, and whether the individual knew or should have known than the statement or representation was inaccurate.

(b) Whether the individual failed or caused another to fail to disclose a material fact, in connection with an application for FSC that resulted in the overpayment, and whether the individual knew or should have known that the fact was material.

(c) Whether the individual knew or could have been expected to know that the individual was not entitled to the FSC payment.

(d) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any other action or omission of the individual or of which the individual has knowledge, and which was erroneous or inaccurate or otherwise wrong.

(e) Whether there has been a determination of fraud under paragraph 1 of this section or section 606 of the Act.

In the event of an affirmative finding on any of the foregoing factors, recovery of the overpayment shall not be waived.

(2) In determining whether equity and good conscience exists the following factors shall be considered:

(a) whether the overpayment was the result of a decision on appeal, and whether the State agency had given notice to the individual that the case has been appealed further and that the individual shall be required to repay the overpayment in the event of a reversal of the appeal decision.

(b) whether recovery of the overpayment will not cause extraordinary financial hardship to the individual, and there has been no affirmative finding under paragraph 2.a of this section with respect to such individual and such overpayment.

In the event of an affirmative finding on either of the foregoing factors, recovery of the overpayment shall not be waived. For this purpose, an extraordinary financial hardship shall exist if recovery of the overpayment would result directly in the individual's loss of or inability to obtain minimal necessities of food, medicine, and shelter for a substantial period of time; and extraordinary and lasting financial hardship shall be extraordinary as described above and may be expected to endure for the foreseeable future.

In applying this hardship test in the case of attempted recovery by repayment, a substantial period of time shall be 30 days, and the foreseeable future shall be at least three months. In applying this hardship test in the case of proposed recoupment from other benefits, a substantial period of time and the foreseeable future shall be the longest potential period of benefit entitlement as seen at the time of the request for a waiver determination. In making financial hardship determinations, the State agency shall take into account all potential income of the individual and the individual's family and all cash resources available to the individual and the individual's family in the time period being considered.

(3) Determinations granting or denying waivers of overpayments shall be made only on request for a waiver determination. Notices of determination of overpayments shall include information concerning the waiver provisions of this section.

(4) An FSC overpayment may be recovered either by offset or repayment by the individual. The SESA will, during the three-year period after the date the individual received the payment of FSC to which the individual was not entitled, recover the amount to be repaid, or any part thereof,

(a) from any FSC payable under the Act;

(b) from any compensation payable to the individual under any Federal unemployment compensation law administered by the SESA (UCFE, UCX, etc.);

(c) under any other Federal law administered by the SESA (DUA, REPP, AEPP, etc.) which provides for payment of any assistance or allowance with respect to any week of unemployment.

(5) No single deduction, however, may exceed 50 percent of the amount of the payment from which such deduction is made. To the extent permitted under State law, an FSC overpayment may be recovered by offset, within the three-year limitation, from benefits payable under the State unemployment compensation law.

(6) At the end of the three-year limitation, the SESA may remove the overpayment from its accounting record. Although no further active collection efforts by the SESA are required, the SESA should maintain an administrative record during the subsequent three-year period to provide for possible collection through methods other than offset. After the subsequent three-year period, the SESA may dispose of the overpayment record.

(7) Under the Act, no repayment shall be required, and no deduction shall be made, until a determination of overpayment has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(8) FSC overpayment recovery shall be enforced by any action or proceeding which may be brought under State or Federal law, unless recovery of the overpayment is waived in accordance with the Act and these instructions.

Overpayments of FSC recovered in any manner shall be credited or returned to the appropriate account of the United States.

(9) FSC payments shall *not* be used to offset State regular UI or EB overpayments. FSC payments shall be used to recover any existing overpayments made under any Federal unemployment benefit or allowance program administered by the SESA. Determinations under this section shall be subject to the determination and appeal and hearing provisions of sections H and I.

H. *Other Changes.* Sections G through K and M through Q of Part II of GAL 2-83, as amended by change 1, are unchanged by this issuance and remain in effect. There are no changes to Part III, *Job Placement and Work Test Activities.*

[FR Doc. 83-10123 Filed 4-18-83; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-13,706]

Amstar Corp., Philadelphia, Pennsylvania; Affirmative Determination Regarding Application for Reconsideration

By an application dated March 11, 1983, an official of the company requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of the workers and former workers of Amstar Corporation's refinery in Philadelphia, Pennsylvania. The determination was published in the **Federal Register** on March 15, 1983 (48 FR 10,948).

The application for reconsideration claims, among other things, that the U.S. Government created the economic

climate which compelled Amstar to suspend operations at Philadelphia. U.S. imports of both sugar and blended syrups from Canada and the classification rulings by the U.S. Customs Service on blended syrups, permitting them to be imported without duty or quota are the more proximate reasons for the shutdown. It is claimed that the blended syrups are like and directly competitive with refined sugar.

Conclusion

After review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this April 11, 1983.

Robert O. Deslongchamps,

Acting Deputy Administrator, Unemployment Insurance Service.

[FR Doc. 83-10364 Filed 4-18-83; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-13,579]

Clark Equipment Co., Jackson, Michigan; Negative Determination on Reconsideration

On March 9, 1983, the Department issued an Affirmative Determination Regarding Application for Reconsideration for former workers and workers of Clark Equipment Company, Jackson, Michigan. This determination was published in the **Federal Register** on March 18, 1979 (48 FR 11534).

The company in its application for reconsideration argues that Clark's market share for internal combustion and electric forklifts decreased in 1981 while the market share for imported Japanese models increased. Also, a number of assumptions are put forward which relate to the potential market for Clark's production.

Findings in the investigative file identify articles produced at the Jackson plant as transmissions, torque converters and components for road and off-the-road equipment. The major share of production is shipped to other domestic and foreign plants of Clark with the remainder sold to outside customers. The Department's survey of customers of articles produced at the Jackson plant showed that most respondents did not purchase imported heavy vehicle transmissions nor torque converters during 1980, 1981 or the first nine months of 1982. Customers which decreased purchases from the Jackson plant and increased purchases of imports from 1980 to 1981 represented a small proportion of Jackson's sales during the same period.

On reconsideration, the Department found that there is no basis for certification under the "integration of production" principle since none of Clark's domestic forklift assembly plants to which the Jackson plant supplies components had workers covered by a current certification of eligibility to apply for adjustment assistance. The Department also found that company imports of forklifts with Jackson-made transmission are small.

The data and argument presented in the application for reconsideration all pertain to the impact of imported forklifts on company forklift sales—actual and potential. As noted above, no decision on the impact of forklift imports on forklift production and employment has been made by the Department that would provide a basis for certification of component workers. Further, if such certification is made in the future pursuant to a recently received petition from Clark's Battle Creek, Michigan assembly plant, TA-W-14,512, further investigation of the degree of integration of the Jackson plant into company forklift production facilities would be required to determine whether a coverage basis exists.

The Trade Act of 1974 requires final articles (forklifts) to be considered as like or directly competitive with comparable imported articles. Imports of transmissions and other components must be considered by themselves in determining import injury to workers who manufactured these products at Jackson. The courts have concluded that imported finished articles are not like or directly competitive with their domestic components parts thereof. *United Shoe Workers of America, AFL-CIO* v. *Bedell*, 506 F 2d 174 (D.C. Circ., 1974). In that case, the court held that imported, finished women's shoes were not like or directly competitive with shoe counters, a component of footwear.

Conclusion

After reconsideration, I reaffirm the original denial of eligibility to apply for adjustment assistance to workers and former workers of Clark Equipment Company, Jackson, Michigan.

Signed at Washington, D.C., April 8, 1983.

Harold A. Bratt,

Deputy Director, Office of Program Management Unemployment Insurance Service.

[FR Doc. 83-10361 Filed 4-18-83; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-13,702]

General Motors Corp., General Motors Assembly Division Fremont, California; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 9, 1982 in response to a petition received on August 4, 1982 which was filed on behalf of workers at the Fremont, California plant of General Motors Assembly Division of General Motors Corporation. Workers at the Fremont plant produced "A" and "A Special" which are intermediate automobiles.

A certification covering the petitioning group of workers remained in effect until April 25, 1982 (TA-W-7075). The Fremont, California plant ceased production operations in March 1982. Consequently further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, D.C. this 8th day of April 1983.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 83-10363 Filed 4-18-83; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-13,864]

Van Waters and Rogers Co., Pinehurst, Idaho; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation (TA-W-13,864) was initiated on October 18, 1982 in response to a petition received on Octobere 8, 1982 which was filed on behalf of workers at Van Waters and Rogers Company, Pinehurst, Idaho. The workers produced liquid copper sulfate.

The petitioner requested in a letter dated March 17, 1983 that the petition be withdrawn. On the basis of this request, continuing the investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 8th day of April 1983.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 83-10362 Filed 4-18-83; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding

eligibility to apply for adjustment assistance issued during the period April 4, 1983–April 8, 1983.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–13,795; Bessco Knitting Div., Bessco Holding Corp., Freeport, NY

TA–W–13,704; Standbuilt Upholstery, Inc., Brooklyn, NY

TA–W–13,609; Republic Steel Corp., Buffalo District Steel Plant, Buffalo, NY

TA–W–13,401; Jones & Laughlin Steel Corp., Atco, NJ

In the following cases the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA–W–13,759; Singer Furniture, Trumann, AR

TA–W–13,780; Venus Lace, Inc., Fort Lee, NJ

TA–W–13,781; Virginia Mills, Inc., Fort Lee, NJ

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–13,978; Mountain States Minerals Enterprises, Inc., Tucson, AZ

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–14,004; The Standard Slag Co., Ashland, KY

Aggregate U.S. imports of scrap steel did not increase as required for certification.

Affirmative Determination

TA–W–13,716; Hema Shirt Co., Inc., New York, NY

A certification was issued in response to a petition received on August 9, 1982 covering all workers separated on or after January 1, 1982 and before October 1, 1982.

I hereby certify that the aforementioned determinations were issued during the period April 4, 1983–April 8, 1983. Copies of these determinations are available for inspection in Room 9120, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 83–10365 Filed 4–18–83; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpse of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determinatiion of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 29, 1983.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 29, 1983.

The petitions filed in this case are available for inspection at the Office of the Director, Office or Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C. this April 11, 1983.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
American Ship Building Co., Am Ship Div. (Boilermakers & IBEW).	Lorain, Ohio	3/25/83	3/11/83	TA-W-14,540	Ships.
Butte Anaconda & Pacific Railway Co. (UTU)	Anaconda, MT	4/6/83	3/29/83	TA-W-14,541	Transports copper ore products for Anaconda Co.
(The) Durwick Co. (Labor International Union of No. Amer.).	Ridgefield Park, NJ	4/6/83	3/28/83	TA-W-14,542	Warehouse textiles materials.
Haught, Inc. (workers)	Parkersburgh, WV	4/7/83	3/28/83	TA-W-14,543	Oil and gas separators.
Jim Walter Resources, Inc., Mining Div. #5 Mine (UMWA)	Brookwood, AL	4/6/83	3/29/83	TA-W-14,544	Coal mining.
Jim Walter Resources, Inc., Mining Div. #7 Mine (UMWA)	Do	4/6/83	3/29/83	TA-W-14,545	Do.
Jim Walter Resources, Inc., Mining Div. Central Shop (UMWA).	Do	4/6/83	3/29/83	TA-W-14,546	Do.
Jim Walters Resources, Inc., Mining Div., Nebo Mine (UMWA).	Graysville, AL	4/6/83	3/29/83	TA-W-14,547	Do.
Kerr Glass Manufacturing Corp. (GPPAW)	Keyport, NJ	4/7/83	3/29/83	TA-W-14,548	Plastic valves and closures.
Krauss Rainwear, Inc. (company)	Bronx, NY	3/24/83	3/21/83	TA-W-14,549	Ladies' rainwear.
Pinto Valley Copper Corp., Pinto Valley Operations (USWA).	Miami, AZ	4/6/83	3/25/83	TA-W-14,550	Copper concentrate, copper cathodes, molybium.
Anamax Mining Co. (USWA)	Sahuarita, AZ	3/15/83	3/14/83	TA-W-14,551	Copper mining.
Atlas Copco Holyoke, Inc. (workers)	Holyoke, MA	3/31/83	3/28/83	TA-W-14,552	Air compressors equipment, stationery gas, hydraulic drill rigs, portable air compressors.

APPENDIX—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Eric Mann International, Inc. (company)	New York, NY	4/6/83	3/31/83	TA-W-14,553	Sweaters—ladies' and childrens.
Island Creek Coal Co., #0 Elk Creek Mine (UMWA)	Emmett, WV	3/31/83	3/28/83	TA-W-14,554	Preparation plant—coal.
Leparto Garments Co. (workers)	Leparto, Ark	3/25/83	3/21/83	TA-W-14,555	Sportswear—women's.
Nootech International Corp. (workers)	Walla Walla, WA	3/25/83	3/23/83	TA-W-14,556	Foam grips for handlebars.
Oak Communications Systems (workers)	Elkhorn, WI	3/31/83	3/28/83	TA-W-14,557	Head and and decoder equipment.
Reserve Mining Co. (USWA)	Babbit, Minn	3/25/83	3/24/83	TA-W-14,558	Iron ore mining.
Reserve Mining Co. (USWA)	Silver Bay, Minn	3/25/83	3/24/83	TA-W-14,559	Taconite pellet processing.
Shetler Globe Corp., Mitchel & Smith Div. (workers)	Norfolk, VA	3/28/83	3/14/83	TA-W-14,560	Cork and cork rubber gaskets.
Zenith Electronics Corp. of Texas (company)	McAllen, Texas	3/29/83	3/23/83	TA-W-14,561	Color T.V. components—module boards, assemblies.
Eastern Stainless Steel Co., (USWA)	Baltimore, MD	4/1/83	3/22/83	TA-W-14,562	Stainless steel products—sheared plate, sheet, coil, strip.
Four Star Corp., (workers)	So. Haven, Mich	4/1/83	3/29/83	TA-W-14,563	Automotive interior and exterior bright trim.
Levi Strauss & Co. (ACTWU)	Charleston Heights, S.C	3/9/83	3/7/83	TA-W-14,564	Men's shirts.
(The) Mettowee Lumber & Plastics Co. (United Furniture Worker of Amer.).	Granville, NY	4/1/83	3/29/83	TA-W-14,565	Plastic tubing, straps, caps, gliders lumber logs.
Ohio Ferro Alloys Corp. (USWA)	Powhatan Point, Ohio	3/31/83	3/23/83	TA-W-14,566	Silicon metal.
Penn Machine Co. (workers)	Johnstown, Pa	3/29/83	3/24/83	TA-W-14,567	Mining equipment replacement parts and industrial parts.
Phelps Dodge Corp., Safford Branch (company)	Safford, AZ	3/26/83	3/21/83	TA-W-14,568	Copper mining.
Salem Sportswear (workers)	Salem, MO	3/29/83	3/14/83	TA-W-14,569	Outerwear—jackets, men's and boys.
(The) Telescope Folding Furniture Co, Inc. (United Furniture Wkrs of Amer.).	Granville, NY	4/1/83	3/29/83	TA-W-14,570	Directors chair, pool furniture, beach furniture, patio furniture.
Allied Chemical Co., Allied Corp., Ironton Tar Processing Plant (USWA).	Ironton, Ohio	4/5/83	3/28/83	TA-W-14,571	Coal tar chemicals.
Texaco, Inc., Texaco, USA, Eagle Point Plant (OCAW/IU)	Westville, NJ	4/1/83	3/25/83	TA-W-14,572	Gasoline, benzene, toulene, furnace oil.
Union Electric Steel Corp. (USWA)	Burgettstown, PA	3/31/83	3/28/83	TA-W-14,573	Forged hardened steel rolls.

[FR Doc. 83-10366 Filed 4-18-83; 8:45 am]

BILLING CODE 4510-30-M

Heavyweight Motorcycles, and Engines and Power Train Subassemblies

On February 1, 1983, the U.S. International Trade Commission (ITC) determined that increased imports of heavyweight motorcycles are a substantial cause of serious injury, or the threat thereof, to the domestic industry for purposes of the import relief provisions of the Trade Act of 1974. ITC also determined that increased imports of motorcycle engines and power train subassemblies are not a substantial cause of serious injury or the threat thereof to the domestic industry (48 FR 6043).

Section 224 of the Trade Act directs the Secretary of Labor to initiate an industry study whenever ITC begins an investigation under the import relief provisions of the Act. The purpose of the study is to determine the number of workers in the domestic industry petitioning for relief who have been or are likely to be certified as eligible for adjustment assistance, and the extent to which existing programs can facilitate the adjustment of such workers to import competition. The Secretary is required to make a report of this study to the President and also make the report public (with the exception of information which the Secretary determines to be confidential).

The U.S. Department of Labor has concluded its report on heavyweight motorcycles, and engines and power train subassemblies. The report found as follows:

1. Since April 3, 1975, the effective date of the adjustment assistance program, the U.S. Department of Labor (DOL) has received nine petitions from workers involved in the heavyweight motorcycles and engines and power train subassemblies industry. Five petitions were certified, three petitions covering 1,870 workers were denied, and one was terminated. As of September 30, 1982, DOL had paid $2,437,345 in trade readjustment allowances to 2,169 former workers of three plants. No payments have yet been made to the 1,200 workers certified in late January 1983. No job search allowances were paid to workers certified, althouth $10,400 in relocation allowances were paid to six workers. Thirty workers had entered training as of September 30, 1982.

2. Average employment of workers engaged in the heavyweight motorcycles and engines and power train subassemblies industry increased between 1977 and 1981, but declined in the first three quarters of 1982. Permanent employment levels for the heavyweight motorcycles industry may decline slightly in 1983, while levels for the heavyweight engines and power train subassemblies industry should remain constant, although temporary layoffs are expected.

3. Unemployment rates for three of the five areas with plants producing heavyweight motorcycles and engines and power train subassemblies were above the national unemployment rate of 10.4 percent (unadjusted) for November 1982. Reemployment prospects for present and potentially separated workers range from good to less than fair for the heavyweight motorcycles industry and poor for the heavyweight engines and power train subassemblies industry.

4. Fiscal year 1983's funding level of $25.0 million plus the $5.5 million carryover from Fiscal Year 1982 should satisfactorily meet DOL's funding needs for training, job search and relocation allowances and other employability services of workers eligible under the worker adjustment assistance program. Trade readjustment cash allowances (TRA) are entitlements funded from the Federal Unemployment Benefit and Allowances (FUBA) account. In addition, $25.0 million has been set aside for the administration and delivery of dislocated worker benefits under the Job Training Partnership Act (JTPA) for Fiscal Year 1983.

Copies of the Department report containing nonconfidential information developed in the course of the 6-month investigation may be purchased by contacting the Office of Trade Adjustment Assistance, U.S. Department of Labor, 601 D Street N.W., Room 9120, Washington, D.C. 20213 (phone 202-376-6698).

Signed at Washington, D.C. this 11th day of April 1983.

Albert Angrisani,

Assistant Secretary of Labor.

[FR Doc. 83-10382 Filed 4-18-83; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-82-129-C]

AMAX Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

AMAX Coal Company, 105 South Meridian Street, P.O. Box 967, Indianapolis, Indiana 46206 has filed a petition to modify the application of 30 CFR 77.216-5 (water, sediment or slurry impoundments and impounding structures; abandonment) to its Gibralter Mine (I.D. No. 15-02065) located in Muhlenberg County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that an abandonment plan be approved by the District Manager prior to the abandonment of any water impoundment.

2. Petitioner seeks a modification of the portion of the standard that requires that an abandonment plan for a water impoundment contain provisions to preclude the probability of future impoundment of water.

3. Petitioner proposes that the abandonment plan for the water impoundment may provide that the water impoundment continue to impound water after abandonment, and submits the following:

a. This structure meets the MSHA engineering design criteria for low-hazard water impoundments;

b. All mining and reclamation activities have ceased and there are no miners in the area;

c. Rogers Brothers Coal Company owns the land upon which the impoundment exists and has agreed to assume the responsibility for maintenance and continued integrity of the impounding structure;

d. The impoundment has a limestone riprapped emergency channel spillway in addition to a pipe spillway, assuring controlled outflow even if the pipe spillway were to temporarily clog; and

e. The future planned use of the water impoundment is water for livestock. The impoundment has been stocked with fish and will also be used for fishing.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 19, 1983. Copies of the petition are available for inspection at that address.

Dated: April 11, 1983.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 83-10370 Filed 4-18-83; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-83-26-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Renton Mine (I.D. No. 36-00807) located in Washington County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. The main return entries 36 Butt, 15 East Main, and 20 East Main will serve a newly developed North Field Section of the mine. The roof of each entry has deteriorated and fallen in some areas. These entries have also experienced water accumulation. Travel in these aircourses to make examinations would expose miners to hazardous conditions; rehabilitation of these aircourses would also expose miners to hazardous conditions.

3. As an alternate method, petitioner proposes to establish and maintain air monitoring stations at specified locations in the returns and on the surface. Results of examinations will be kept in a book at each station and on the surface. Weekly air readings and methane testing will be made by a certified person at each station.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 19, 1983. Copies of the petition are available for inspection at that address.

Dated: April 11, 1983.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 83-10371 Filed 4-18-83; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-83-17-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Shoemaker Mine (I.D. No. 46-01436) located in Marshall County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. There are four water-gathering pumps that are located at the bottom of the refuse belt slope. The pumps operate continuously to control water in extremely wet areas of the mine. The entry off which the pumps are located is part of the main haulage line through which coal, supplies, and equipment are transported, and part of the work force travels.

3. As an alternate method to coursing air currents used to ventilate structures or areas enclosing electrical installations directly into the return, petitioner proposes to enclose the pumps in fireproof housings with fireproof doors. An automatic fire suppression device will be installed in the pump house which will be activated by heat sensors. Electrical circuits will be installed and maintained in accordance with applicable requirements. No oil or combustible materials will be stored in the pump station.

4. Petitioner states that the proposed alternate method outlined above will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 19, 1983. Copies of the petition are available for inspection at that address.

Dated: April 11, 1983.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 83-10367 Filed 4-18-83; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-83-15-C]

G. M. & W. Coal Co. Inc.; Petition for Modification of Application of Mandatory Safety Standard

G. M. & W. Coal Company, Inc., P.O. Box 112, Jennerstown, Pennsylvania 15547 has filed a petition to modify the application of 30 CFR 75.1100-2(e)(2) (quantity and location of firefighting equipment) to its Grove No. 1 Mine (I.D. No. 36-02398), Grove No. 3 Mine (I.D. No. 36-05362), and its Grove No. 5. Mine (I.D. No. 36-06888), all located in Somerset County, Pennsylvania. The petition is filed under Section 101(c) of the Federal Mined Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that one portable fire extinguisher and 240 pounds of rock dust be provided at each temporary electrical installation.

2. Excessive moisture in the areas of the temporary electrical installations has caused the rock dust to become wet and ineffective in case of an emergency.

3. As an alternate method, petitioner proposes to provide two 2A10 BC or higher rating fire extinguishers or one with twice the minimum rating required for each installation.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 19, 1983. Copies of the petition are available for inspection at that address.

Dated: April 11, 1983.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 83-10373 Filed 4-18-83; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-83-9-C]

Lick Fork Elkhorn Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Lick Fork Elkhorn Coal Company, P.O. Box 65, Elkhorn City, Kentucky 41522 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15-01646) located in Pike County, Kentucky. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the Lower Elkhorn seam and ranges from 40 to 48 inches in height, with consistent ascending and descending grades creating dips in the coal bed.

3. Petitioner states that the installation of cabs or canopies on the mine's electric face equipment limits the visibility of the equipment operator, increasing the chances of an accident. The canopies can also strike and dislodge roof support, resulting in a diminution of safety.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 19, 1983. Copies of the petition are available for inspection at that address.

Dated: April 11, 1983.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 83-10372 Filed 4-18-83; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-83-8-C]

Peabody Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Peabody Coal Company, P.O. Box 158, Pawnee, Illinois 62558 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to it Mine No. 10 (I.D. No. 11-00585) located in Christian County, Illinois. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitoner's statements follows:

1. The petition concerns the use of a plug interlock or plug padlock on mobile battery equipment used inby face crosscuts.

2. Petitioner states that there is an element of danger in having plugs locked together in the event of a short circuit or fire occurring on the equipment.

3. As an alternative method, petitioner proposes that a spring-loaded harness snap or a spring hairpin device be used, in lieu of a padlock.

4. Petitioner states that the proposed alternative method will provide the same measure of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 19, 1983. Copies of the petition are available for inspection at that address.

Dated: April 11, 1983.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 83-10369 Filed 4-18-83; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-83-1-M]

Puerto Rican Cement Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

Puerto Rican Cement Company, Inc., Box 1349, Ponce, Puerto Rico 00733-1349 has filed a petition to modify the application of 30 CFR 56.4-27 (self-propelled mobile equipment; fire extinguishers) to its Ponce Cement Plant (I.D. No. 54-00001) and its Planta Cal

Operation (I.D. No. 54–00194), located in Ponce, Puerto Rico. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that each lift truck used around the mines be equipped with a suitable fire extinguisher readily accessible to the equipment operator.

2. As an alternate method, petitioner proposes to install 76 fire extinguishers in specified locations where the lift trucks are used. In the event of a fire, the equipment operator will leave the vehicle to locate a nearby extinguisher and obtain nearby help.

3. Petitioner states that the proposed alternate method will better protect the equipment operator than complying with the standard, and for these reasons requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 19, 1983. Copies of the petition are available for inspection at that address.

Dated: April 11, 1983.

Patricia W. Silvey,

Acting Director, Office of Standards, Regulations and Variances.

[FR Doc. 83-10360 Filed 4-18-83; 8:45 am]

BILLING CODE 4510-43-M

Office of Pension and Welfare Benefit Programs

Beverly Hills Travel Bureau Inc., et al.; Proposed Exemptions

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employees Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption, unless otherwise stated in the Notice of Pendency, withn 45 days from the date of publication on this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register.** Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Beverly Hills Travel Bureau Inc., Defined Benefit Pension Plan (the Plan), Located in Beverly Hills, California

[Application No. D–3642]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed purchase of real estate (the Property) by the Plan (including the making of payments under an existing mortgage) from Charles C. Tilbury, Sally C. Tilbury, Dennis E. McNulty, and Teresa L. McNulty (collectively, the Applicants), parties in interest with respect to the Plan, provided that the terms of the proposed transaction are at least as favorable to the Plan as those the Plan could obtain in an arm's length transaction with an unrelated party.

Summary of Facts and Representations

1. The Plan covered approximately 38 participants as of July 1, 1981, and has assets totalling approximately $1,167,000 and no liabilities other than future benefits payable to participants, beginning in 1985. The proposed purchase would involve less than 30% of the Plan's total assets. Charles C. and Sally C. Tilbury are Plan trustees and members of the Plan Committee, which manages the Plan, and the sole owners of the Plan sponsor. Charles C. Tilbury is also investment manager under the Plan and has primary authority with respect to investments of the Plan. Both Charles C. and Sally C. Tilbury are fiduciaries with respect to the Plan. Teresa L. McNulty is the daughter of Charles C. and Sally C. Tilbury, and Dennis E. McNulty is Teresa L. McNulty's husband. It is represented that neither Dennis E. McNulty nor Teresa L. McNulty is a Plan fiduciary.

2. The Property, located at 2233 Gurnville Road, Santa Rosa, California, comprises 5.08 acres currently improved with a 40-year old single family dwelling and currently zoned with local governmental final approvals for the construction of 28 planned-unit-development townhouses or condominiums. The Property is currently leased to Ms. Doris Evans, who has no relationship of any nature to the Plan, the Plan sponsor, any Plan fiduciary, or

the Applicants. It is not intended that the Property will ever be leased or sold to any party in interest with respect to the Plan. If the proposed exemption is granted, the Plan will collect the rental payments, amounting to $525 per month, on the Property upon completion of the proposed sale. Real estate taxes on the Property are estimated to be about $4,000 per year. Therefore, the Plan expects a small positive cash flow from the Property.

The Property is located approximately four miles northwest of downtown Santa Rosa in a neighborhood currently in transition from agricultural to residential use. On January 20, 1982, Robert W. Barnham, an independent appraiser, estimated the fair market value of the Property, as is, at $336,000. In his appraisal report, Mr. Barnham states that the current and highest best use for the Property is conforming to the zoning for planned unit development or residential use. Mr. Barnham was classifed as a Level 2 appraiser by the Federal National Mortgage Association on October 28, 1980 and had several years of appraisal experience prior to that date.

3. The Plan proposes to purchase the Property to hold it for appreciation and does not intend at this time to subdivide or develop the Property although it does not foreclose the possibility of later subdivision or development. The Property will be reappraised by an independent appraiser within 60 days before the proposed purchase date. The proposed total purchase price will be the lesser of 90% of such appraised value or $302,400 (90% of the Property's fair market value as appraised by Mr. Barnham on January 20, 1982). The Property is subject to a first mortgage whose current outstanding principal balance is $170,000, of which amount $35,000 is due December 31, 1982, and the balance is due December 31, 1983. Interest at 11% per year is payable monthly on the outstanding principal balance, and repayment of the balance due without penalty is permitted. The first mortgage is payable to Richard M. and Denise Marracq, who have no relationship to the Plan, the Plan sponsor, or the Applicants. The Plan will pay the Applicants cash in the amount of the difference between the proposed purchase price and the outstanding principal balance on the mortgage at the close of escrow. The Plan intends to prepay the remaining payments due under the mortgage directly to Mr. and Mrs. Marracq at the time the Plan acquires the Property. No sales fee or commission of any kind will be charged to the Plan in connection with the proposed purchase. All transaction, escrow, title, and other fees will be paid by the Plan sponsor.

4. Thomas E. Higgins, President of Higgins, Marcus & Lovett, Inc., a business valuation organization located in Los Angeles, California, has agreed to act as an independent fiduciary for the purpose of approving and monitoring the purchase of the Property. It is represented that Mr. Higgins has no relationship with the Applicants, the Plan sponsor, or Mr. and Mrs. Marracq. Mr. Higgins has participated extensively in corporate valuation studies, including expert testimony in court and in settlement hearings with the Internal Revenue Service. He currently serves on the faculty of the Graduate School of Business, Pepperdine University, where he teaches finance and accounting. He is a member of the Los Angeles Society of Financial Analysts, the Western Pension Conference, and serves on the board of directors of several Southern California corporations. He was formerly vice president and regional manager of a national valuation organization. Mr. Higgins states that he is familiar with the Act and his duties, responsibilities, and liabilities in acting as an independent fiduciary and accepts those duties, responsibilities, and liabilities. His familiarity with the Act is based upon discussions with counsel and his experience as an investment analyst and portfolio manager dealing with numerous pension and profit sharing plans.

5. Mr. Higgins has considered the proposed purchase in light of the contents of the Plan's current portfolio, its needs for diversification and liquidity, the projected return of the Plan's portfolio relative to its funding objectives, and the risk of loss and opportunity for gain posed by the proposed purchase. He notes that the Plan's current portfolio consists primarily of an investment of $648,853 in Smith Barney's National Liquid Reserve Money Market Fund, currently providing a return of approximately 8% yearly; and an 18-year loan to a Plan participant, with a principal balance of $595,245.53, bearing interest at the rate of 16¾% per year, and secured by two separate parcels of real property as well as by the participant's vested accrued benefit of $597,435.[1] Mr. Higgins believes that both of these are very low risk liquid investments yielding a fixed rate of return with no potential for capital appreciation and that the rate of return on the money market fund is relatively low, consistent with the low risk and the fact that funds are withdrawable on demand.[2]

He explains that current portfolio management theory holds that the best rate of return at the lowest level of risk can be achieved not by seeking to invest each individual asset of the portfolio in a risk free manner, but by taking calculated risks in the context of a balanced and diversified portfolio. He states that after payment to the Plan of the $284,453 contribution due from the Plan sponsor on March 15, 1983, the proposed investment would involve approximately 24% of the Plan's total assets; 28% of such assets would then be invested in the money market fund, and 48% in the participant loan. He believes the proposed purchase will complement the Plan's current portfolio in that, unlike the other investments, the Property has the probability of capital appreciation because it is located in an area experiencing population growth, leading to increased demand for residential property.

Mr. Higgins explains that the retirement annuities scheduled to be paid to Plan participants before the year 2000 amount to $3,051 per month. No participants will be eligible to receive benefits before June 30, 1985. At that time, two participants will begin receiving annuities aggregating $2,618 per month. Payments receivable by the Plan under the above-mentioned participant loan and the return anticipated by the Plan from the money market fund, based upon current rates, will total $6,891.91 per month from June 30, 1985 to December 31, 1999. Future contributions will also be available to pay benefits accruing in future periods.

In view of Plan's strong liquid position, Mr. Higgins believes the Plan can affort to reduce its liquidity and thus anticipate a higher rate of return. In this regard, he notes that the Plan's current funding objective is for a 2% rate of return after adjusting for inflation. He believes the Plan may have difficulty meeting this objective unless it moves some of its assets into longer term assets with potential capital appreciation. In his opinion, therefore, the proposed purchase is consistent with the Plan's funding objective. He states that for the reasons mentioned above investing in real estate should increase the diversification of the Plan's assets

[1] The applicants believe this participant loan meets the requirements of section 408(b)(1) of the Act. In this proposed exemption, the Department expresses no opinion as to whether this loan satisfies such requirements.

[2] Mr. Higgins states that with respect to the above-mentioned participant loan the borrower's vested interest under the Plan can be considered as cash collateral by the Plan.

and generate an increased return for the Plan without interfering with the Plan's liquidity requirements. He believes that the proposed purchase is particularly appropriate for the Plan for the following reasons:

(1) The Property has received government zoning and approval essential for development. The risks of a decrease in value due to unfavorable governmental action is not, therefore, significant.

(2) Due to the Property's location, approximately four miles from downtown Santa Rosa, the Property can be expected to increase in value as the anticipated population growth of Santa Rosa and surrounding areas increases demand for residential properties.

(3) The terms of the proposed purchase are not less favorable than those obtainable in an arm's length transaction. An obvious advantage of the Property is that the Plan can purchase it for 90% of its appraised value. One of the risks of holding real property is the fact that the property must appreciate sufficiently to pay a real estate commission on resale. The ability to purchase the Property at 90% of appraised value should remove this risk completely.

(4) Another advantage of the proposed purchase over many other available real estate investments is that it is manageable by the Plan trustees. Thus, the Plan need not incur the cost of compensating outside professionals for their services in managing the Property.

(5) No commisisons or fees will be charged to the Plan in connection with this purchase.

(6) The proposed investment will provide adequate diversification for the Plan, for the reasons discussed above.

For all these reasons, Mr. Higgins believes that it is reasonable to anticipate that the Property will appreciate at a rate greater than the Plan's current fixed investments or of many other real estate investments and that the proposed investment is appropriate for the Plan and in the best interest of its participants.

6. In summary, the applicants represent that the proposed purchase meets the exemptive criteria provided by section 408(a) of the Act for the reasons stated by Mr. Higgins (see 5, above) and also because (a) less than 24% of the Plan's total assets as of March 15, 1983, will be involved in the proposed purchase, (b) Mr. Higgins will serve as an independent fiduciary to the Plan with respect to the proposed purchase, and (c) such independent fiduciary believes the proposed purchase is an appropriate investment for the Plan and is in the best interests of the Plan and its participants.

For Further Information Contact: Mrs. Miriam Freund, of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

The Employees Stock Ownership Plan and Trust of Control Systematologists, Inc. (the Plan), Located in Rayne, Louisiana

[Application No. D-3788]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale of a parcel of unimproved real property (the Property) by the Plan to Mr. B. C. Holstead, president and majority shareholder of Control Systematologists, Inc. (the Employer), the Plan sponsor, and his wife, Mrs. Jackie Holstead, provided the purchase price is not less than the fair market value of the Property on the date of sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with 48 participants and net Plan assets of $542,701 as of May 31, 1982. The Plan's trustees (Trustees) are Mr. George R. Duhon, Mr. Henry Daigle and Mr. Charles McClelland, all of whom are employees of the Employer.

2. On May 14, 1982, the Plan purchased the Property from Fastrac Construction Company, a Louisiana corporation unrelated to the Employer, Mr. Holstead or his wife, for a cash purchase price of $82,600. The Property is comprised of approximately 1.19 acres known as Lots 10 and 13 of Safety Lane Industrial park, a subdivision in the Parish of Lafayette, Louisiana. The Trustees state that the Property is non-income producing.

3. The Trustees state that they believed the Property would be a sound investment for the Plan because of industrial growth in the Lafayette, Louisiana area. It was intended that the Property would, in the near future, be developed by the Plan and either leased or sold to unrelated third parties. The Trustees state that local industry is currently suffering a severe slowdown and that their previous judgment that the purchase of the Property was a sound investment is no longer valid.

4. Therefore, the Trustees propose that the Plan sell the Property to Mr. and Mrs. Holstead for a cash purchase price of $82,600. This price represents the fair market value of the Property as of November 10, 1982, as determined in an appraisal performed by Mr. Gene N. Cope, a real estate appraiser who is independent of the Employer and Mr. and Mrs. Holstead. The Trustees represent that the Property has no special value to the Holsteads nor to the Employer and that neither the Holsteads nor the Employer own any property adjacent to or in the general vicinity of the Property. Additionally, the Trustees state that the Plan has expended no money on the Property other than the original purchase price and that all closing costs relating to the proposed sale will be borne by Mr. and Mrs. Holstead.

5. R. E. Rowe & Associates, Ltd. (Rowe and Associates), a law firm whose only relationship to the Plan, the Employer or the Holsteads, derives from its employment by the Holsteads to file an application for the exemption requested herein, has agreed to act as a fiduciary on the Plan's behalf regarding the proposed sale. Rowe and Associates has designed, drafted and provided investment advice to over 300 qualified employee benefit plans over the past few years, and has also had substantial experience with regard to real estate transactions. Rowe and Associates has reviewed all of the pertinent information and documents relating to the proposed sale, including the appraisal of the Property and the proposed purchase price, and has concluded that the terms and conditions of the sale are at least as favorable to the Plan as those obtainable from an unrelated party. Rowe and Associates also states that it would be advisable for the Plan to sell the Property, due to the economic downturn in the area and the fact that the Property is unimproved and non-income producing. Therefore, in its capacity as the Plan's independent fiduciary, Rowe and Associates believes the proposed sale would be in the interests of the Plan and recommends that the Plan enter into the sale.

6. In summary, the applicants represent that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act due to the following:

(a) Rowe and Associates, acting as the Plan's independent fiduciary, represents that the sale of the Property would be in the interest of the Plan and its participants and beneficiaries and

recommends that the Plan enter into the sale;

(b) the sale would be a one-time transaction for cash; and

(c) the purchase price of the Property would be its fair market value as determined by an independent appraiser.

For Further Information Contact: Robert N. Sandler of the Department, telephone (202) 523-8195. (This is not a toll-free number.)

Flagel, Huber, Flagel and Company Profit Sharing Plan (the Plan) Located in Dayton, Ohio

[Application No. D-3881]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) The proposed loan (the Loan) of $40,000 by the Plan to Flagel, Huber, Flagel and Company (the Employer), the sponsor of the Plan, for the purchase of certain office equipment, provided that the terms of the Loan are no less favorable to the Plan than those obtainable by the Plan in an arm's length transaction with an unrelated third party; and (2) the proposed personal guarantees of the Loan by the shareholders of the Employer.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 33 participants and assets of approximately $874,000 as of December 31, 1982. The Plan is administered by trustees who are also directors and/or employees of the Employer. The Employer is a certified public accounting firm located in Dayton, Ohio with net assets of approximately $767,135 as of December 31, 1982. The Employer is requesting an exemption to permit the Loan from the Plan at 17½% interest per annum to finance the purchase of new major office equipment (the Equipment) from IBM Corporation at a purchase price of $40,000. The Equipment is a copier/printer system known as the IBM Model 6670 Information System/Copier Model 66 Collater. The Loan will be repaid in 36 equal monthly payments of principal and interest in the amount of $1,436.19. The Employer represents that the proposed Loan terms are identical to those of the financing arrangements offered by IBM Corporation for purchase of the Equipment.

2. As security for the Loan the Employer will execute a promissory note (the Note) in favor of the Plan reflecting the terms of the Loan. The Employer will also execute and file a security agreement giving the Plan a first lien on the Equipment. As further security for the Loan, the Employer will execute and file a security agreement giving the Plan a first lien on certain other major office equipment (the Collateral Equipment) previously purchased by the Employer. The Collateral Equipment consists of an IBM System 34 Computer and HighSpeed Printer. The Equipment and the Collateral Equipment werer appraised by Mr. Henry Lucas (Lucas), President of Lucas Office Equipment and Service, Inc., located in Centerville, Ohio. Lucas determined that as of January 7, 1983 the total fair market value of all equipment offered as security for the Loan was $80,382.

3. The Employer is owned by seven shareholders (the Principals): Louis G. Homan, Gerald P. Flagel, David A. Drewett, Edwin A. Hard, Donald R. Harting, Terrance P. Egan, and Arthur J. Huber, Jr. An exemption is also requested to permit the personal guarantees of the Loan by the Principals. The Employer represents that the Principals' combined net worth is approximately $3,300,000.

4. The Employer has entered into an Investment Advisory Agreement (the Agreement) with the Third National Bank and Trust Company (the Bank) of Dayton, Ohio. The Bank, which is unrelated to the Employer, will act as an independent fiduciary representing the interests of the Plan with respect to the Loan. The Bank has reviewed the proposed Loan terms and has determined that the Loan would be a prudent investment for the Plan, that the Loan's terms are in the best interests and protective of the Plan, and that the Loan's terms will be equal to or better than terms which the Plan could reasonably expect in dealing with an unrelated party. Pursuant to the Agreement the Bank will monitor repayment of the Loan and will pursue on behalf of the Plan remedies available under the Note in the event of default by the Employer. Additionally, the Bank will periodically review the total fair market value of all collateral offered as security for the Loan. If the Bank determines at any time that such value is less than 200% of the aggregate outstanding principal of the Note, the Bank will require the Employer immediately to reduce the outstanding principal to an amount not greater than 50% of the value of the collateral. In the alternative the Employer may mortgage to the Plan additional collateral acceptable to the Bank with a fair market value, when combined with the original collateral, equal to 200% of the outstanding principal of the Note.

5. In summary, the applicant represents that the proposed Loan will satisfy the criteria of section 408(a) of the Act because: (1) The Loan will be secured by a promissory note and by recorded first liens on collateral with an aggregate appraised fair market value in excess of 200% of the amount of the Loan, and an independent fiduciary will ensure that the value of the collateral for the Loan remains at least 200% of the outstanding principal of the Note; (2) the Loan will be monitored by an independent fiduciary; (3) the Loan will be guaranteed by the seven shareholders of the Employer; and (4) the independent fiduciary has reviewed the terms of the Loan on behalf of the Plan and represents that the Loan will be a prudent investment for the Plan on terms equal to or better than those which the Plan could expect in dealing with an unrelated party in a similar transaction.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Scheumann Lumber Employees Pension Plan and Trust (the Plan) Located in New York, New York

[Application No. D-3924]

Proposed Exemption

The Department is considering granting and exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to: (1) A loan (the Loan) by the Plan of $350,000, not to exceed 25 percent of the assets of the Plan, to Four B's Realty Company (the Partnership), provided the terms and conditions of the Loan are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party; and (2) the assignment of rents due under a lease (the Lease) executed between A. B. Scheumann Lumber Corporation (the

Employer) and the Partnership in the event of a default on the Loan.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with ten participants and total assets of $1,033,299 as of March 1, 1983. The trustees of the Plan are Ms. Shirlee Bookspan and Messrs. Leo, Kenneth and Emmanuel Bookspan (the Bookspans). The Bookspans make investment decisions for the Plan. With the exception of Ms. Bookspan, all of the Bookspans are participants in the Plan.

2. The Employer, which maintains its business premises at 527 West 36th Street, New York, New York, is a distributor-supplier of lumber, dry wall and building materials for the construction trade in the New York City metropolitan area. The Bookspans are principals of the Employer. Messrs. Kenneth and Emmanuel Bookspan are also co-partners in the Partnership which is located at 524 West 36th Street, New York, New York. The Partnership is a real estate partnership whose primary asset is its business premises (the Real Property).

3. An exemption is requested to allow the Plan to lend $350,000 to the Partnership. The Partnership will use the Loan proceeds to repay the unsecured indebtedness it incurred to finance the purchase of the Real Property. Specifically, the Partnership will repay a $100,000 debt owed to Mr. Leo Bookspan and a $250,000 debt owed to the Employer.

4. The Loan will be evidenced by a promissory note providing for the repayment of the Partnership's indebtedness to the Plan in monthly installments over a 15 year period. Interest will be established at the initial rate of 14 percent per annum on the unpaid balance. The interest rate will be adjusted annually by an independent fiduciary on each anniversary date of the Loan to a rate equal to the prime rate then being charged by the National Bank of North America (NBNA), New York, New York. The interest rate will not be reduced below 14 percent. If at the time of closing the prime rate is higher than 14 percent, the interest rate will be fixed at the higher amount.

Based upon Plan assets of $1,033,299, the initial sum to be disbursed at closing will be approximately $260,000 or 25 percent of the assets of the Plan. The Plan will disburse the remaining $90,000 in not more than three payments so that as the Plan assets increase at no time will the aggregate value of the funds disbursed pursuant to the Loan exceed 25 percent of the fair market value of the Plan's assets. In addition, the repayment period will not exceed 15 years from the date of the initial disbursement.

5. To secure the Loan, the Partnership will execute a first mortgage (the Mortgage) on the Real Property and obtain mortgage title insurance from the Title Guarantee Company and Pioneer National Title Insurance Company. The deed to the Real Property as well as the Mortgage will be recorded. The Real Property consists of a two story industrial-type commercial building purchased by the Partnership for $400,000 on August 4, 1981 from G and C Realty Associates, an unrelated party. On February 25, 1983, the Real Property was appraised at $525,000 by Mr. Melvyn Trepper, an M.A.I. appraiser affiliated with William A. White and Sons of 51 East 42nd Street, New York, New York.

6. The Mortgage will contain the following additional provisions: (a) A requirement that the Partnership will be required to pledge additional collateral for the Loan should the independent fiduciary designated to oversee the Loan determine that the fair market value of the Real Property has fallen below 150 percent of the principal balance then due on the Loan based upon an independent appraisal of the Real Property; (b) a "due on sale" clause to provide that the then remaining principal and accrued interest will become due and payable in the event of a sale of the Real Property; (c) a "due on encumbrance" clause to provide that the remaining principal and accrued interest will become due and payable if a junior lien is placed on the Real Property; and (d) a penalty of 2 percent of the payment due on the Loan will be assessed against the Partnership in the event any payment is received more than 15 days after the due date.

7. The Real Property will be leased to the Employer under the Lease which is a 15 year "net-net" lease. The Lease will provide for a minimum rental of $7,000 per month and it will include rental adjustments. The Lease obligates the Employer to pay all real estate taxes, assessments, utilities, water and sewer rents, repairs and alterations, casualty insurance, rent insurance, etc. and by its terms is made subordinate to the Mortgage. The Lease will operate to assign to the Plan the Partnership's rights to the rents, issues and profits derived from the Real Property in the event of default by the Partnership. Pursuant to the terms of the Mortgage, the assignment will continue in effect until the Loan is paid.

8. NBNA will serve as the independent fiduciary for the Loan. NBNA does not presently have, nor has it had in the past, any commercial relationship with the Employer, the Plan or the other parties in interest involved in the proposed transaction. Under the terms of an Investment Management Agreement which will be entered into between NBNA and the Trustees, NBNA will have the sole and exclusive authority to monitor, manage and implement the terms and conditions of the Loan to ensure that the rights of the Plan participants are protected. Among its duties, NBNA will be empowered to approve the initial and subsequent disbursements and certify to the Trustees that the disbursements will not exceed the foregoing limitations, adjust the interest rate for the Loan annually, ensure that the Loan collateral remains at least 150 percent of the outstanding Loan balance, and take all necessary and appropriate actions in the event of a default on the Loan.

NBNA believes that as an investment, the interest rate for the Loan and the type of collateral pledged are appropriate for the transaction and are typical of mortgage transactions presently being entered into in New York City. Based on an examination of the Plan's investment portfolio which is composed of approximately $1 million in short-term investments, NBNA represents that the Loan will be proper in light of the Plan's cash flow and liquidity needs. Thus, the Loan should not necessitate any sale of assets to meet these needs. In addition, NBNA states that the Plan's portfolio, including the Mortgage, will be sufficiently liquid and diversified in view of the overall investment scheme of the Plan.

9. In summary, it is represented that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The Loan will be secured by the Real Property or other collateral which will at all times represent at least 150 percent of the amount borrowed; (b) all rents due under the Lease will be assigned to the Plan in the event of a default on the Loan; and (c) NBNA, which has determined that the Loan is an appropriate investment for the Plan, will approve and monitor the terms of the Loan as an independent fiduciary and take all appropriate actions, if necessary, to enforce the rights of the Plan.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

The Hillerich and Bradsby Retirement Plan (the Plan) Located in Louisville, Kentucky

[Application No. D-3983]

Proposed Exemption

The department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale for $374,000 in cash of certain Real property (the real Property) by Hillerich and Bradsby (the Employer) to the Plan, provided the amount paid for the Real Property is not more than its fair market value at the time the transaction is consumated.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan with approximately 128 participants and total assets of $2,375,646 as of August 31, 1982. The trustee of the Plan (the Trustee) is Citizens Fidelity Bank and Trust Company of Louisville, Kentucky. The Trustee makes investment decisions for the Plan.

2. The Employer is a Kentucky corporation which has been in existence since 1911. The Employer is engaged in the manufacture and distribution of sporting goods consisting of wooden and aluminum baseball and softball bats, golf clubs, hockey sticks, gloves, mitts and batting gloves. The Employer is the manufacturer of the "Louisville Slugger" baseball bat and "Powerbilt" golf clubs. The Employer maintains its principal offices at 200 West Broadway, Louisville, Kentucky.

3. Beginning in 1932, the Employer commenced acquiring portions of the Real Property from unrelated parties for the purpose of storing timber for use in the production of baseball bats. The Real Property is located at 311 Caulbert Street, Louisville, Kentucky. Adjoining tracts of land were acquired by the Employer between 1947 and 1952 from other unrelated parties and during this period, certain improvements consisting of open sheds under which timber could be stored were erected on the Real Property.

4. On or about October 1977, the Employer began leasing a portion of the Real Property to the Kentucky-Indiana Lumber Company (K-I) of Louisville, Kentucky. (K-I is an unrelated entity.) The leasing arrangement continued until August 1982 when all of the Real Property was leased to K-I. At that time, the lease between the Employer and K-I was renegotitated to provide for lease payments of $47,400 per year from August 1, 1982 through June 30, 1983 and then $52,404 per year for the remainder of the term. On September 15, 1982, the Employer and K-I executed a new lease, which is triple net, for a term of seven years commencing on July 1, 1984 and ending on June 30, 1991. The annual rental to be paid under this lease is $54,996.

5. The Real Property was appraised initially by Mr. William F. Lippy (Mr. Lippy), an M.A.I., S.R.E.A. appraiser from Louisvillle, Kentucky. Mr. Lippy determined that the Real Property had a fair market value of $374,000 as of September 15, 1981. In an updated appraisal of February 8, 1983, Mr. Lippy concluded that the value of the Real Property as encumbered by the lease is $441,000.

6. The Trustee is requesting an exemption to permit the sale of the Real Property by the Employer to the Plan. The Plan will take the Real Property subject to the existing lease. The purchase price for the Real Property will be $374,000 the appraised value as determined by Mr. Lippy in September 1981. The Plan will pay the full purchase price in cash on the date of closing. The Plan will not be required to pay any real estate fees or commissions in connection with the sale.

7. The Trustee has agreed to act as the independent fiduciary for the Plan with respect to the proposed transaction. No director or officer of the Employer is involved in the management or directorship of the Trustee bank. Similarly, no director or officer of the Trustee is involved in the management or directorship of the Employer. As of September 30, 1982, the Trustee had deposits in excess of $1.4 billion and loans to customers in excess of $1.2 billion. Between September 30, 1981 and September 30, 1982, the Employer's deposits with the Trustee averaged $500,000 or less than .03 percent of the Trustee's deposits. The Employer's long term indebtedness to the Trustee as of September 30, 1982 totaled $2 million or less than .16 percent of the total loans of the bank. In addition, the Trustee made a loan commitment to the Employer for $4 million but little of this line of credit was used. As of September 24, 1982, $500,000 was still owing. The Trustee had also issued $513,815 in letters of credit for the benefit of the Employer.

The Trustee believes the proposed transaction is an appropriate and suitable investment for the Plan and in the interests of and protective of the Plan and its participants and beneficiaries. The Trustee has reviewed Mr. Lippy's appraisals and it thinks the proposed acquisition of the Real Property will present an opportunity for the Plan to diversify its portfolio and acquire an asset which may appreciate in value. The Trustee has reviewed the terms of the proposed transaction and it has determined the terms satisfy commercial standards and have been reached in an arm's length manner. The Trustee will review and monitor the proposed sale and it will take all steps that are necessary and proper to protect the interests of the Plan and its participants and beneficiaries.

8. In summary, it is represented that the proposed sale will satisfy the statutory crieteria of section 408(a) of the Act because: (a) the Trustee has determined the proposed transaction is in the best interests of the Plan and protective of its participants and beneficiaries; (b) the sales price for the Real Property has been determined by Mr. Lippy, an independent appraiser; and (c) the Plan will not be required to pay any real estate commissions or fees incidental to its pruchase of the Real Property.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisons of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code,

the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transactions which is the subject of the exemption.

Signed at Washington, D.C., this 14th day of April, 1983.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 83-10383 Filed 4-18-83; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel Meetings

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Post Office, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

Date: May 2, 1983.
Time: 8:30 a.m. to 5:00 p.m.
Room: 415
Program: This meeting will review applications submitted for Humanistic Projects in Media, (Special Deadline for Children's Media and Continuing Projects that have already received NEH support and need notification before April 1, 1984 that they can move to the next phase of their projects.) Division of General Programs, for Projects beginning after October 1, 1983.

Date: May 12-13, 1983.
Time: May 12, 8:30 a.m. to 5:00 p.m.; May 13, 8:30 a.m. to 5:00 p.m.
Room: 415
Program: This meeting will review applications submitted for Humanistic Projects in Media, (Special Deadline for Children's Media and Continuing Projects that have already received NEH support and need notification before April 1, 1984 that they can move to the next phase of their projects.) Division of General Programs, for Projects beginning after October 1, 1983.

Date: May 15-16-17, 1983
Time: 8:30 a.m. to 5:00 p.m. each day
Room: 315
Program: This meeting will review applications submitted for Special Projects/Program Development, Division of General Programs, for projects beginning after October 1, 1983.

Date: May 9-10, 1983
Time: 8:30 a.m. to 5:00 p.m.
Room: 415
Program: This meeting will review applications submitted for Special Projects/Program Development, Division of General Programs, for projects beginning after October 1, 1983.

The proposed meetings are the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) information the disclosure of which would significantly frustrate implementation of proposed agency action; pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), (6) and (9)(B) of section 552 of Title 5, United States Code.

Further information about these meetings can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, D.C. 20506, or call (202) 786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 83-10390 Filed 4-18-83; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Presidential Young Investigator Awards; Guidelines

The following guidelines describe a new initiative of the National Science Foundation. These guidelines, incorporated into a packet that includes nomination forms, are now being printed, and national distribution is scheduled for on or about May 1, 1983. Copies will be sent to the Presidents of U.S. doctoral degree granting institutions and the chairpersons (by title) of all their engineering, mathematics, life and physical sciences departments. Additional copies will be available shortly afterwards from the National Science Foundation. For further information, contact Michael M. Frodyma, phone (202) 357-7536.

Presidential Young Investigator Awards

The National Science Foundation announces a new program of Presidential Young Investigator Awards. These awards provide cooperative research support for the Nation's most outstanding and promising young [1] science and engineering faculty. With participation of the industrial sector, the awards are intended to improve the capability of universities to respond to the demand for highly qualified scientific and engineering personnel for academic and industrial research.

Science and engineering are essential components of the economic well-being and overall vitality of the Nation. Excellence in some areas of science and engineering is limited by a shortage of highly qualified faculty for research and teaching. The effect of this shortage on academic research and the education of scientific and engineering personnel is a cause of national concern.

The President of the United States, in addressing this concern, has asked the National Science Foundation to initiate a program of awards for cooperative research support for young science and engineering faculty. The combined efforts of the Federal and industrial sectors in sponsoring these awards will provide research support for up to five years for promising young faculty committed to an academic career in fields where needs exist. The objectives of these awards are:

- To assure the highest quality and relevance in science and engineering education in U.S. colleges and universities; and

[1] "Young" in this context refers to academic age—no more than seven years since receiving the doctorate.

• To relieve shortages of highly qualified faculty in science and engineering fields.

Eligibility

U.S. institutions granting doctorates in fields supported by the Foundation are invited to nominate outstanding faculty members who are early in their careers. Nominees must have received their doctorates after September 1, 1976, and must hold full-time, regular appointments in tenure track or tenure positions when nominated. Graduate and postdoctoral students who have accepted appointments to such positions may also be nominated. Citizens or nationals of the United States and permanent residents are eligible to receive these awards.

Those nominated may conduct research in any branch of the mathematical, physical, and biological sciences and engineering. Emphasis will be directed to those fields where there are substantial needs for faculty development.

Support and Commitments

A maximum of 200 new Presidential Young Investigator Awards will be made each year. It is anticipated that in the first year up to 100 awards will be made in the fields of engineering; up to 60 awards in the mathematical and physical sciences; up to 25 in the biological sciences; and up to 15 in the astronomical, atmospheric, earth and ocean sciences. Awards will be made for up to five years based on an annual determination of satisfactory performance and subject to the availability of funds.

Minimum Presidential Young Investigator Awards will consist of $25,000 of Federal funds. However, in accordance with the objective of developing improved links between the academic and industrial sectors, the Foundation will provide up to $37,500 of additional funds on a dollar-for-dollar matching basis to contributions from industrial sources, resulting in total support of up to $100,000.

In addition, nominating institutions are expected to make a significant commitment to support individuals who receive these awards. The institution is responsible for providing full academic year salary for the awardee and arranging for the industrial support. Up to 10 percent of the Foundation funds may be used to defray administrative expenses in lieu of indirect costs.

Application Procedures

Individuals must be nominated by the sponsoring institution. The nomination submission must include:

• A nomination from the departmental chairperson or analogous administrative head using the Nomination Form provided, which includes a statement of the institutional commitment to provide the academic year salary and arrange for the matching industrial support;

• A complete, up-to-date *curriculum vitae*, including a one-page description of research interests and a complete list of the nominee's publications;

• A statement signed by the nominee regarding commitment to an academic career;

• Recommendations from three referees not from the nominating institution who are familiar with the research interests and capability of the nominee.

After an awardee has been selected, the nominating institution will be asked to prepare a budget in support of the awardee's research activities for a period of up to five years. The budget should show both the amount requested from the Foundation and the sources and amounts of industrial support. This information will be used in determining the amount of the award and other terms and conditions. Except as otherwise provided in this announcement, the terms and conditions, as well as the expected institutional commitment, will be analogous to those stated in the publication, NSF 82-79, *Grants for Scientific and Engineering Research.*

Evaluation and Selection

Selection will be based on an evaluation of the nominee's ability and potential for contributing to the future vitality of the Nation's scientific and engineering effort as evidenced by accomplishments, including original research contributions and commitment to an academic career. Recommendations; suitability of the sponsoring institution for the nominee's research and academic career; probable impact of the award on the future career development of the nominee; scientific quality of the research likely to emerge; and the potential impact of the award on the research field in question will be considered. The selection of individuals to receive Presidential Young Investigator Awards will be made by the National Science Foundation with the advice of panels of outstanding scientists and engineers.

Inquiries

Inquiries regarding the awards may be addressed to the Presidential Young Investigator Awards, National Science Foundation, Washington, D.C. 20550, or telephoned inquiries to (202) 357-7536.

Dated: April 13, 1983.

Michael M. Frodyma,

Program Director, Postdoctoral Fellowships.

[FR Doc. 83-10275 Filed 4-18-83; 8:45 am]

BILLING CODE 7555-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) Collection title: Application for Survivor Death Benefits.

(2) Form(s) submitted: AA-21, AA-11a, G-131, G-273a.

(3) Type of request: Revision.

(4) Frequency of use: On occasion.

(5) Repondents: Individuals, Funeral Directors.

(6) Annual responses: 30,000.

(7) Annual reporting hours: 11,175.

(8) Collection description: The collection obtains the information needed to pay death benefits and annuities due but unpaid at death under the RRA. Benefits are paid to designated beneficiaries or to survivors in a priority designated by law.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Milo Sunderhauf (202-395-6880), Office of Management and Budget, Room 3201, New Executive Office Building, Washington, D.C. 20503.

William A. Oczkowski,

Director of Planning and Information Management.

[FR Doc. 83-10323 Filed 4-18-83; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 13158; 812-5384]

John Hancock Tax-Exempt Cash Management Trust and John Hancock Distributors, Inc.; Filing of Application

April 12, 1983.

Notice is hereby given that John Hancock Tax-Exempt Cash Management Trust ("Fund"), John Hancock Place, P.O. Box 111, Boston, Massachusetts 02117, registered under the Investment Company Act of 1940 (the "Act") as an open-end, diversified managment investment company, and John Hancock Distributors, Inc. (hereinafter referred to jointly with the Fund as the "Applicants"), John Hancock Place, P.O. Box 111, Boston, Massachusetts 02117, the proposed principal underwriter of the Fund's shares, filed an application on November 24, 1982, and an amendment thereto on March 1, 1983, requesting an order of the Commission, pursuant to Section 6(c) of the Act, exempting the Fund from the provisions of Section 2(a)(41) of the Act and Rules 2a-4 and 22c-1 thereunder, to the extent necessary to permit the Fund to use the amortized cost method of valuing its portfolio securities. 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. Such persons are also referred to the Act and the rules thereunder for the complete text of those provisions thereof from which exemption is being sought.

Applicants state that the Fund is a "money market" fund, investing in high quality, short-term securities which are exempt from Federal income tax. Applicants state that the Fund's investment objective is to provide the greatest current income exempt from Federal income tax that is consistent with capital preservation and liquidity. Applicants state that the Fund's assets will be invested in high quality, short-term tax-exempt securities commonly referred to as "municipal obligations". Applicants state that the Fund's investments in municipal obligations will include certain industrial development bonds, short-term municipal notes, project notes secured by the full faith and credit of the United States Government, and tax-exempt municipal commercial paper. Applicants state that, in addition, the Fund is authorized under its investment objective to invest in certificates of participation in industrial development bonds.

Applicants also state that the Fund may purchase variable or floatng rate municipal obligations. Applicants submit that, at present, the Fund intends to purchase variable rate obligations with a demand feature permitting the Fund to redeem them by tendering them back to the issuer at par value on demand prior to maturity. Applicants further submit that the Fund does not presently intend to purchase certificates of participation in variable rate industrial development bonds, although it may do so in the future. Applicants represent that the maturity of variable rate or floating rate obligations in which the Fund invests presently or in the future will be determined in accordance with the procedures set forth in proposed Rule 2a-7 under the Act or, if the rule should ultimately be adopted, in accordance with the procedures set forth in the rule as adopted.

Applicants state that the Fund intends to maintain a net asset value of $1.00 per share. Applicants state that the Fund's net asset value is calculated by adding the value of all its investments and other assets, deducting its actual and accrued liabilities, and dividing by the number of shares outstanding. Applicants submit that the Trustees of the Fund believe it would be in the best interests of the Fund's potential shareholders to use the "amortized cost" method of valuation of the Fund's assets to maintain the $1.00 per share value. Applicants further submit that the amortized cost valuation would permit relatively steady daily dividends to shareholders and, at the same time, shareholders would have the convenience of being able to value their holdings simply by knowing the number of shares they own. Applicants represent that the Trustees have determined that, absent unusual circumstances, amortized cost value would be appropriate and would represent the fair value of the Fund's portfolio securities.

Applicants state that the Fund's net income will be declared as a dividend each business day. Applicants state that net income consists of all interest income accrued in the Fund's portfolio, plus net realized gain or minus net realized losses, and less all expenses and liabilities chargeable against income. Applicants state that interest income includes discount earned (including both original issue and market discount) on investments purchased at a discount, less amortization of premium, accrued ratably to the date of maturity. Applicants state that expenses, including the advisory fee payable to the Fund's investment adviser, are accrued each day.

Applicants assert that in Investment Compay Act Release No. 9786 the Commission issued an interpretation of Rule 2a-4 which would require money market funds to "value debt securities with greater than 60 days remaining to maturity based upon current market quotations if readily available or, if such quotations are not readily available, in such a manner as to take into account any unrealized appreciation or depreciation due to changes in interest rates and other factors which would influence the current fair values of such securities". The application states that, accordingly, Applicants believe that without the requested exemption, the Fund may be prohibited from determining its per share net asset value in the manner proposed.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, conditionally or unconditionally exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision or provisions of the Act or the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants submit that the issuance of the requested order is necessary and appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of the Act, within the meaning of Section 6(c) of the Act.

Applicants consent to the following conditions to the order granting the exemptions requested:

1. In supervising the Fund's operations and delegating special responsibilities involving portfolio management to the Fund's investment adviser, the Trustees of the fund undertake—as a particular responsibility within the overall duty of care owed to its shareholders—to establish procedures reasonably designed, taking into account current market conditions and the fund's investment objective, to stabilize the Fund's net asset value per share, as computed for the purpose of distribution, redemption and repurchase, at $1.00 per share.

2. Included within the procedures to be adopted by the Trustees of the Fund shall be the following:

(a) Review by the trustees of the Fund, as they deem appropriate and at such intervals as are reasonable in light of current market conditions, to determine the extent of deviation, if any, of the net

asset value per share as determined by using available market quotations from the $1.00 amortized cost price per share, and the maintenance of records of such review. To fulfill this condition, Applicants state that the Fund intends to use actual quotations or estimates of market value reflecting current market conditions chosen by the Trustees in the exercise of their discretion to be appropriate indicators of value, which may include, *inter alia*, (1) quotations or estimates of market value for individual portfolio instruments, or (2) values obtained from yield data relating to classes of money market instruments published by reputable sources.

(b) In the event such deviation from the $1.00 amortized cost price per share exceeds ½ of 1 percent, a requirement that the Trustees will promptly consider what action, if any, should be initiated.

(c) Where the Trustees determine that the extent of any deviation from the Fund's $1.00 amortized cost price per share may result in material dilution or other unfair results to investors or existing shareholders, they shall take such action as they deem appropriate to eliminate or to reduce to the extent reasonably practicable such dilution or unfair results, which may include: redemption of shares inkind; the sale of portfolio instruments prior to maturity to realize capital gains or losses, or to shorten the Fund's average portfolio maturity; suspending dividends; or utilizing a net asset value per share as determined by using available market quotations.

3. The Fund will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable net asset value per share; provided, however, that the Fund will not (a) purchase any instrument with a remaining maturity at the date of acquisition of greater than one year, or (b) maintain a dollar-weighted average portfolio maturity which exceeds 120 days. In fulfilling this condition, the Fund agrees that if the disposition of a portfolio instrument results in a dollar-weighted average portfolio maturity in excess of 120 days, the Fund will invest its available cash in such a manner as to reduce its dollar-weighted average portfolio maturity to 120 days or less as soon as reasonably practicable.

4. The Fund will record, maintain, and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in condition 1 above; the Fund will record, maintain and preserve for a period of not less than six years (the first two years in an easily accessible place) a written record of the Trustees' considerations and actions taken in connection with the discharge of their responsibilities, as set forth above, to be included in the minutes of the meetings of the Trustees. The documents preserved pursuant to this condition shall be subject to inspection by the Commission in accordance with Section 31(b) of the Act as though such documents were records required to be maintained pursuant to rules adopted under Section 31(a) of the Act.

5. The Fund will limit its portfolio investments to those United States dollar-denominated instruments which the Trustees determine present minimal credit risks and which are of "high quality" as determined by any major rating service or, in the case of any instrument that is not rated, of comparable quality as determined by the Trustees.

6. If any action pursuant to condition 2(c) is taken the Fund will include in its next quarterly report, as an attachment to Form N–1Q, a statement describing the nature and circumstances of such action.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than May 6, 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 Applicants at the addresses 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. 83-10393 Filed 4-18-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19665; SR-NASD-82-17]

National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change

April 11, 1983.

The National Association of Securities Dealers, Inc. ("NASD"), 1735 K Street, NW., Washington, D.C. 20006, submitted on September 17, 1982, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, to amend Schedule C of its By-Laws to require new and current members who do not maintain an office in the United States responsible for preparing and maintaining financial reports required to be filed with the Commission and NASD ("foreign members") to meet certain requirements for membership. The requirements include: preparing all reports and a ledger chart of accounts in English and U.S. dollars; providing an individual fluent in English and knowledgeable in financial and securities matters during examinations; and utilizing the services of a registered broker-dealer, registered clearing agency or bank located in the United States to clear all transactions involving NASD members unless both parties to the transaction agree otherwise.

The NASD proposed the rule change in order to enable it to determine that foreign members are in compliance with NASD rules and the federal securities laws. Although the rule change imposes additional program requirements on foreign members, the NASD believes that such requirements are necessary to assist the NASD's inspections and to ensure that the NASD's non-foreign members are not subjected to unnecessary financial exposure in their dealings with foreign members.

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. 19105, October 6, 1982), and by publication in the **Federal Register** (47 FR 46014, October 14, 1982). In addition, on February 3, 1983, the NASD filed an amendment to the proposed rule change to clarify the clearing requirements for foreign members. The amendment was noticed in Securities Exchange Act Release No. 19549 (February 28, 1983), 48 FR 9413, March 4, 1983. No comments were received with respect to the proposed rule filing or the amendment.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to

Section 19(b) 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.[1]

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-10396 Filed 4-18-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19667; SR-PSE-83-5]

Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

April 12, 1983.

The Pacific Stock Exchange, Inc. ("PSE"), 301 Pine Street, San Francisco, CA 94104, submitted on February 15, 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 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.

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. 19554 (March 3, 1983) and by publication in the **Federal Register** (48 FR 9722, March 8, 1983). No comments were received with respect to the proposed rule filing.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange 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 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. 83-10394 Filed 4-18-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19666; SR-Phlx-82-16]

Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

April 11, 1983.

The Philadelphia Stock Exchange, Inc. ("Phlx") 1900 Market Street, Philadelphia, PA 19103, submitted on December 9, 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, that would amend Phlx's certificate of incorporation by providing that foreign currency options participants would receive, upon liquidation of Phlx, assets attributable to unexpended contributions from such participants and to earnings from Phlx's foreign currency options market.

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. 19329, December 13, 1982) and by publication in the **Federal Register** (47 FR 58421, December 30, 1983).[1] No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange 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 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. 83-10395 Filed 4-18-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19669; File No. SR-OCC-82-24]

Proposed Rule Change Submitted by the Options Clearing Corporation ("OCC"); Order Approving Proposed Rule Change

April 13, 1984.

On November 3, 1982, OCC submitted a proposed rule change (SR-OCC-82-24) under Section 19(b)(2) of the Securities Exchange Act of 1934 (the "Act") that would allow OCC's participants to make escrow deposits for short call positions in options on Government National Mortgage Association securities ("GNMAs"), U.S. Treasury bonds, bill and notes, and bank certificates of deposit ("CSs") (collectively "debt options"). In addition, the proposed rule change expands OCC's Escrow Receipt Depository program ("ERD program") to include escrow deposits of these underlying non-equity financial products ("debt securities"). The Commission published notice of the proposal in the **Federal Register** on November 26, 1982, and invited interested persons to comment.[1] No letters of comment were received by the Commission. Subsequently, on February 25, 1982, the Commission received a letter amending the filing and the Debt Securities Supplement.

The proposed rule change would allow OCC debt options clearing members,[2] in lieu of depositing margin with OCC, to cover short call positions in debt options by making escrow deposits of GNMAs, Treasury bills, bonds, and notes, and bank CDs (collectively, "debt securities") through OCC's ERD program.[3]

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[1] 17 CFR 200.30-3(a)(12).

[1] At the time this notice was published, Phlx had not yet formally filed the certificate amendment with the State of Delaware. Phlx's state of incorporation. By Amendment No. 1 to this filing, submitted on April 8, 1983, Phlx indicated that the amendment was filed with the State of Delaware on March 28, 1983.

[1] Securities Exchange Act Release No. 19242 (November 16, 1982), 47 FR 53548 (November 26, 1982).

[2] As a prerequisite to clearing transactions in debt options, OCC requires clearing members to meet OCC's operational and financial capacity standards for successful clearance and processing of transactions in debt options.

[3] OCC's current ERD program, as approved by the Commission in Securities Exchange Act Release No. 18844 (June 25, 1982), 47 FR 29046 (July 2, 1982) is an automated system through which book-entry deliveries of escrow and depository receipts relating to the short call equity options positions of participating OCC clearing members are made directly to OCC on behalf of those clearing members by custodian banks approved by OCC to participate in the ERD program ("ERD banks"). Premium settlement for options transactions that involve escrow deposits also is effected through the ERD program. Under OCC's ERD Program, when a clearing member writes an equity call option for a customer, that customer may authorize an ERD bank to escrow the securities needed to cover the clearing member's short equity call option position. The ERD bank effects that escrow deposit by submitting to OCC the appropriate form. Withdrawals and rollovers (*see infra* note 7) of escrowed securities are effected similarly. OCC, as

In OCC's proposed rule changes that enabled OCC to clear and settle certain standardized debt options,[4] debt options clearing members were not permitted to cover their short call debt option positions with escrow receipts. OCC states in this filing that this prohibition seemed necessary at that time because (i) OCC was reluctant to expand the use of escrow receipts, thereby imposing on OCC, its clearing members and escrow custodians a substantial paper-handling burden; and (ii) before underlying debt securities could safely be deposited to cover short call debt option positions, OCC had to design special procedures regarding when deposited debt securities become undeliverable under OCC's rules.[5] With the Commission's approval and OCC's successful implementation of the ERD program, however, OCC now believes that the first basis for the prohibition no longer exists. With respect to OCC's second basis for the prohibition, OCC has devised a number of procedures, which are included in the proposed rule change, that OCC believes adequately address the undeliverability problem. Thus, having developed what OCC believes are operational solutions to both problems, OCC believes that, at this time, the prohibition should be lifted, and the ERD program should be expanded to enable the escrow deposit of underlying debt securities. To accomplish this objective, OCC's proposal, among other things, would amend OCC Rules 1301, 1401 and 1501 to authorize such deposits.

In addition, the proposal sets forth various procedures that allow OCC and ERD banks to take certain remedial actions if the escrowed debt securities become undeliverable under OCC's rules and that ensure that the deposited underlying securities remain in good deliverable form. Specifically, if escrowed debt securities become undeliverable, OCC's proposal would require that the ERD bank either seek and obtain replacement debt securities from the depositing clearing member or initiate a withdrawal of the escrow deposit. Until such time as the escrowed debt securities are replaced or withdrawn, the ERD bank must retain custody of those debt securities or their proceeds for the benefit of OCC. If, in the meantime, the depositing clearing member is assigned an exercise notice that affects the undeliverable escrow deposit, OCC, under the proposed rule change, may take possession of, and sell out, the undeliverable escrowed debt securities. The funds generated by the sell-out would be applied by OCC to the purchase of debt securities in good deliverable form that would be used to satisfy the exercise assignment. Similarly, if the ERD bank has custody of proceeds because the escrowed debt securities have matured, OCC may take possession of the proceeds and use those proceeds to buy-in deliverable debt securities to satisfy the exercise assignment. In either case, if the proceeds from the sell-out or maturity are insufficient to purchase deliverable debt securities, OCC would charge the depositing clearing member for the amount of that deficiency.

Finally, if the ERD bank (or, for that matter, the depositing clearing member) decides to initiate the withdrawal of the escrowed debt securities, OCC will permit the withdrawal instruction only if the depositing clearing member has on deposit at OCC sufficient margin under OCC's margin rules. In any event, OCC may require margin from the depositing clearing member on short call positions covered by escrow deposits that have become undeliverabe.[6]

Finally, the proposed rule change includes a debt Securities Supplement to the Escrow Deposit Agreement which sets forth the debt securities eligible for deposit under the ERD program. It also establishes the contractual responsibilities of ERD banks with respect to debt security escrows and conforms those responsibilities to OCC's rules and procedures. For example, the ERD bank is responsible, under the Supplement, to verify that the substitute debt securities are in good deliverable form whenever a deposition clearing member "rolls-over"[7] debt securities on deposit. Furthermore, under the Supplement, an ERD bank may initiate the withdrawal of an escrow deposit of debt securities by submitting the appropriate form to both OCC and the clearing member. As noted above, OCC will accept the bank initiated withdrawal instruction if that clearing member has sufficient margin on deposit at OCC to collateralize the resulting uncovered short call position. If the clearing member's margin is inadequate, OCC will not permit withdrawal until the clearing member provides OCC with additional margin collateral sufficient to satisfy the deficiency. In addition, notwithstanding OCC's release of the escrow pursuant to the bank initiated withdrawal, the Supplement would prohibit the ERD bank from returning the escrowed debt securities to the customer, until the depositing clearing member authorizes the bank to do so.[8]

The Commission believes that the expansion of the ERD program to encompass escrow deposits of debt securities is appropriate for a number of reasons. Among other things, under the ERD program, OCC's debt options clearing members will be able to reduce their OCC margin obligations efficiently since those members now can cover their short call debt opfions positions through enhanced automated arrangements. (For example through the

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agent for the ERD banks and clearing members on whose behalf the escrow deposit was made ("depositing clearing member"), places all escrow information in an automated system in book-entry form, constantly updates the escrow activity, and forwards various automated reports to ERD banks and clearing members. To participate in the ERD Program, banks must execute an "Escrow Deposit Agreement" which sets forth the banks' and OCC's respective contractual responsibilities. The ERD program significantly reduces the physical handling of traditional escrow receipts and depository receipts. *See* File No. SR–OCC–82–6.

[4] The Commission approved OCC's proposed rule changes relating to GNMA options (SR–OCC–82–21) and Treasury options (SR–OCC–81–12) on October 14, 1982. *See* Securities Exchange Act Release Nos. 19125, 47 FR 46934 (October 21, 1982) and 19127, 47 FR 46941 (October 21, 1982), respectively. On December 14, 1982, the Commission, in Securities Exchange Act Release No. 19333, 47 FR 57377 (December 23, 1982), approved OCC's rule change regarding CD options (SR–OCC–82–27). At this time, trading markets in both GNMA and CD options have not yet begun.

[5] GNMAs for example, can become undeliverable either because the current production rate changes or because payments and prepayments of principal reduce the remaining unpaid principal balance below the minimum deliverable amount ($97,500.01 per contract). In general, treasury bills and CDs can become undeliverable by maturing, and CDs can also become undeliverable if OCC ceases to classify the DC issuer as a "top-tier" bank. *See.* OCC Rules 1301, 1401, and 1501, respectively.

[6] If escrowed underlying GNMA's become undeliverable because the principal payments have reduced the remaining unpaid principal balance below $97,500.01, and the sum of the such unpaid balance plus the principal payments retained by the ERD bank exceeds $97,500, OCC will not consider the escrowed securities as "null and void" for OCC margin purposes until the fourth business day prior to the end of the month in which the remaining unpaid principal balance had fallen below $97,500.01.

[7] "Rollover" is the method by which escrowed securities may be reallocated to cover a different short call position without the return and reissuance of an escrow receipt. To effect the rollover under the ERD program, depositing clearing members must execute properly and forward to OCC an Escrow Rollover Form.

[8] OCC, in its filing, explains that, when an ERD bank, rather than the depositing clearing members, initiates the withdrawal of a deposit of escrowed debt securities, OCC cannot presume that the customer has met his obligations to that clearing member. The customer may have failed either to replace the undeliverable escrowed debt securities or, in lieu thereof, to provide sufficient margin to the clearing member. (With respect to customer margin, *see* Regulation T of the Board of Governors of the Federal Reserve System (12 CFR Part 220)). Thus, absent OCC's requiring a clearing member's consent to bank-initiated withdrawals, the clearing member would be financially exposed since the bank could return to the customer the escrowed debt securities without a margin substitution.

ERD program, securities can be rolled over to cover new or modified short call positions without the release and redelivery of physical receipts.) Also, OCC has proposed suitable and safe ERD procedures that should eliminate the potential complications to the smooth operation of the ERD program posed by the undeliverability of deposited debt securities.

Accordingly, the Commission believes that the proposed rule change is consistent with the Act, and, in particular, Section 17A(b)(3)(F), in that it promotes the prompt and accurate clearance and settlement of securities transactions by extending the efficiences and safety features associated with OCC's existing escrow services. In addition, the proposal will reduce costs for both OCC and its clearing members.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-10391 Filed 4-18-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 19668; File No. SR-SCCP-82-6]

Proposed Rule Change Submitted by the Stock Clearing Corporation of Philadelphia ("SCCP"); Order Approving Proposed Rule Change

April 13, 1983.

On August 20, 1982, the Stock Clearing Corporation of Philadelphia ("SCCP") submitted to the Commission a proposed rule change (SR-SCCP-82-6) under Section 19(b)(2) of the Securities Exchange Act of 1934 (the "Act"). That proposed rule change, together with a subsequently filed amendment,[1] would eliminate SCCP's pre-settlement guarantee of, and mandatory pre-settlement marks-to-the-market relating to, most trades between Philadelphia Stock Exchange ("Phlx") members executed on Phlx and cleared and settled in SCCP's continuous net settlement system ("CNS").[2]

The proposal was published for comment by the Commission on November 15, 1982.[3] No comments were received by the Commission.[4] SCCP, however, solicited comments from its participants before filing the proposal to determine whether its policy of guaranteeing CNS trades from trade date and marking those trades to the market should be modified. Forty-four completed questionnaires were returned to SCCP.[5] SCCP included in its filing copies of those questionnaires.

Under the proposed rule change, SCCP no longer would guarantee all of its participants' CNS trades from trade date and no longer would collect from its participants mandatory pre-settlement marks-to-the-market [6] on a regular basis.[7] SCCP, however, would continue to guarantee from trade date both sides of trades that (1) are executed on the floor of the Phlx by specialists with SCCP participants; and (2) are recorded initially in a SCCP margin account. This continuing guarantee would extend only to both sides of spcialist trades aggregating 1,000 shares per issue per trading day with each *contra* party. Also, under the amendment to the proposal, SCCP would continue to collect from its participants mandatory pre-settlement marks-to-the-market to the extent of the limited guarantee and would remain authorized to collect from all participants marks-to-the-market regarding all trades whenever necessary in SCCP's judgment. Finally, SCCP will coninue to guarantee and collect marks-to-the-market regarding all CNS trades on and after the fifth business day after trade date, *i.e.*, settlement day.

In its filing, SCCP states that the purpose of the proposal is to adjust SCCP's current pre-settlement guarantee of CNS trades and its marks-to-the-market program to recent economic developments. In the past, when financing costs were relatively low, the pre-settlement guarantee, on balance, was attractive to SCCP and to participants. SCCP, by guaranteeing all CNS trades from trade date, hoped to attract more order flow to the Phlx, and SCCP participants were assured that all of their Phlx trades would be completed. Recently, however, with the advent of high interest rates, SCCP participants' costs incident to financing their daily marks-to-the-market have increased significantly. Under current policies, each business day SCCP must collect from participant substantial marks-to-the-market. SCCP now believes that because of those high rates, the pre-settlement guarantee and the marking policy may have reduced both order flow to the Phlx floor, expecially from large retail broker-dealers, and the use of SCCP's services. Thus, to meet these changed circumstances and at the same time to accommodate the interests of the Phlx specialist community,[8] SCCP fashioned the proposed rule change as a compromise. In its filing, SCCP further believes that the proposal is consistent with the provisions of Section 17A(b)(3)(F) of the Act in that it assures the safeguarding of securities and funds which are in SCCP's control.

The Commission agrees with SCCP that the proposal is consistent with Section 17A(b) of the Act. By circumscribing SCCP's previously unlimited pre-settlement guarantee, the proposal will reduce SCCP's overall financial exposure from participant default and, at the same time, encourage increased volume at Phlx. Moreover, even though the proposal still provides a limited guarantee of certain specialist trades, that exposure is met by requiring marks-to-the-market from parties to those trades to the extent of that guarantee.[9] In addition, the proposal

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[1] SCCP filed the amendment with the Commission on April 4, 1983.

[2] In a CNS system, settlement obligations run between each participant and the system which, on settlement day, generates to participants by issue net obligations to deliver securities to the system against payment or to receive securities from the system and the make payment for them. Each settlement day's fails to receive or to deliver securities are included in the netting process for the next settlement day.

[3] Securities Exchange Act Release No. 19236 (November 15, 1982), 47 FR 52840 (November 23, 1982).

[4] In the Commission's publication notice, the Commission specifically requested comment on whether the proposal is consistent with Section 17A(b)(3)(A) of the Act which provides, among other things, that a clearing agency may not be registered unless it is organized and has the capacity to safeguard securities and funds in its custody or control, or for which it is responsible. *See* note 2 *supra*.

[5] All nine Phlx specialists responding to the questionnaire favored continuation of the current trade date guarantee and the marks-to-the-market program. The balance of the responses were from a cross-section of SCCP participants and were almost evenly divided on the issue.

[6] The purpose of SCCP's marks-to-the-market program is to protect SCCP from the risks that a participant, on any day, will default in its CNS settlement obligations, and, because of SCCP's trade guarantee, that SCCP will have to buy-in or sell-out the defaulting participants' positions at unfavorable market prices to complete its settlement responsibilities. Under the current program, SCCP collects from its participants an amount equal to the difference between the contract price and the current market value of each unsettled CNS trade.

[7] SCCP is the only registered clearing corporation that routinely guarantees CNS trades, and marks those trades to the market, from trade date.

[8] On specialist firm, in its questionnaire, responded that "[r]emoval of the trade date guarantee would place our equity specialist at a great deal of exposure since the specialist * * * is the central figure in * * * daily trading [and must] stand ready to deal with all [Phlx members] * * * [;] we rely on the marking to market from trade date and the guaranteeing of trades to ensure * * * confidence that all trades that we enter into will be consummated."

[9] SCCP had decided in its business judgment to continue its policy of guaranteeing certain trades

continues SCCP's authority to levy marks-to-the-market, to be used, however, only extraordinary circumstances. Thus, for example, if SCCP does not, prior to settlement day, guarantee trades between two Phlx floor brokers, and if SCCP become aware of financial or operational difficulties at one of the brokers, SCCP may require that floor broker to provide SCCP with marks, as appropriate, for its protection against the increased risk of default. Finally, the Commission believes that the proposal will reduce financing costs for many SCCP participants, enabling those participants to use those funds for other purposes.

On the basis of the foregoing, the Commission believes that the proposal should be approved.

Accordingly, it is therefore ordered, pursuant to Section 19(b) of the Act, that the proposed rule change (SR–SCCP–82–6) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-10392 Filed 4-18-83; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region II Advisory Council; Public Meeting

The U.S. Small Business Administration Region II Advisory Council, located in the geographical area of New York, will hold a public meeting at 9:30 a.m., on Wednesday, April 27, 1983, at the Jacob Javits Federal Building, 26 Federal Plaza, Room 2936 (29th floor), New York, New York, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Harry S. Tishelman, District Director, U.S. Small Business Administration, 26 Federal Plaza, New York, New York 10278 (212) 264–1318.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

April 13, 1983.

[FR Doc. 83-10378 Filed 4-18-83; 8:45 am]

BILLING CODE 8025-01-M

Region IV—Advisory Council; Public Meeting

The Small Business Administration Region IV Advisory Council, located in the geographical area of Charlotte, N.C. will hold a public meeting at 9:00 a.m. on Monday, May 9, 1983, at North Carolina National Bank, One NCNB Plaza, 12th Floor Auditorium, Charlotte, North Carolina, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Larry D. Cherry, District Director, U.S. Small Business Administration, 230 South Tryon Street, Suite 700, Charlotte, North Carolina 28202, (704) 371–6561.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

April 13, 1983.

[FR Doc. 83-10377 Filed 4-18-83; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 859]

State Department Performance Review Board Members

In accordance with Section 4314(c) (1) through (5) of the Civil Service Reform Act of 1978 (Pub. L. 95–454), the Executive Resources Board of the Department of State has appointed the following additional persons to the State Department Performance Review Board Register, and in so doing amends accordingly Department of State Public Notice No. 703 [45 FR 6877–6878, January 30, 1980), effective March 15, 1983:

Francis J. Meehan, former Ambassador to Poland, Career Minister, Member of Senior Foreign Service;

William B. Jones, former Ambassador to Haiti, Minister-Counselor, Member of Senior Foreign Service;

Robert M. Smalley, Deputy Assistant Secretary, Bureau of Public Affairs;

Stephen W. Bosworth, Director, Policy Planning Staff, Career Minister, Member of Senior Foreign Service.

Dated: March 28, 1983.

Joan M. Clark,

Director General of the Foreign Service and Director of Personnel.

[FR Doc. 83-10324 Filed 4-18-83; 8:45 am]

BILLING CODE 4710-15-M

Office of the Secretary

[CM-8/618]

Integrated Services Digital Network (ISDN) Working Party of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the ISDN Working Party of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on April 27, 1983 at 9:30 a.m. in Room 1107 of the Department of State, 2201 C Street, N.W., Washington, D.C. This Working Party deals with the evoluation of ISDN.

The agenda for the meeting is as follows:

1. Report of the ISDN Technical Working Group Meeting;
2. Report of the Study Group XI Working Party XI/6;
3. Consideration of contributions for CCITT Study Group XVIII and for Study Group VII Rapporteurs on questions 16 and 20;
4. Any other business.

The Chairman of the U.S. ISDN Working Party serves as U.S. representative to CCITT Study Group XVIII whose mandate including the Integrated Services Digital Network and which will meet to consider ISDN matters in June–July at ITU Headquarters in Geneva. He is departing for Europe on April 29 on other ITU business. To ensure timely distribution of U.S. inputs for the Study Group XVIII meeting, he must handcarry to Geneva the documents resulting from the April 27 meeting. Receipt of U.S. inputs by international participants in the Study Group XVIII prior to their departure for Geneva is essential, and it is for this reason that the required 15 day advance notice for this meeting has necessarily been foreshortened.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is suggested that prior to April 27 members of the general public who plan to attend the meeting so advise Mr. Dexter Anderson, Office of International Communications Policy, Department of State, Washington, D.C. 20520, telephone (202) 632–6583. All attendees must use the C Street entrance to the building. Entry will be facilitated 15 minutes before and after the meeting begins.

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prior to settlement day. Because SCCP has made that decision, the Commission believes, and SCCP recognizes, that a marking program to the extent of that guarantee is an important safeguard.

Dated: April 14, 1983.

Earl S. Barbely,

Director, Office of International Communications Policy.

[FR Doc. 83-10379 Filed 4-18-83; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF THE TREASURY

[Dept. Circ. Public Debt Series No. 11-83]

Series T-1985; Interest Rate

April 14, 1983.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,750,000,000 of the United States securities, designated Treasury Notes of April 30, 1985, Series T-1985 (CUSIP No. 912827 PK 2). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated May 2, 1983, and will bear interest from that date, payable on a semiannual basis on October 31, 1983, and each subsequent 6 months on April 30 and October 31 until the principal becomes payable. They will mature April 30, 1985, and will not be subject to call for redemption prior to maturity. In the event an interest payment date or the maturity date is a Saturday, Sunday, or other nonbusiness day, the interest or principal is payable on the next-succeeding business day.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift, or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any posession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Securities registered as to principal and interest will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of registered and book-entry securities, and the transfer of registered securities will be permitted. Bearer securities will not be available, and the interchange of registered or book-entry securities for bearer securities will not be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Standard time, Wednesday, April 20,1983. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, April 19, 1983, and received no later than Monday, May 2, 1983.

3.2. The face amount of securities bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender, and the amount may not exceed $1,000,000.

3.3. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their postions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.4. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loans associations; States, and the political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by full payment for the amount of securities applied for (in the form of cash, maturing Treasury securities, or readily collectible checks), or by a payment guarantee of 5 percent of the face amount applied for, from a commercial bank or a primary dealer.

3.5. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.6. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on securities allotted to institutional investors and to others whose tenders are accompanied by a payment guarantee as provided in Section 3.4., must be made or completed on or before Monday, May 2, 1983. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, April 28, 1983. When payment has been submitted with the tender and the purchase price of allotted securities is over par, settlement for the premium must be completed timely, as specified in the preceding sentence. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities alfotted.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrended. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, and to receive payment for and make delivery of securities on full-paid allotments.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Carole J. Dineen,

Fiscal Assistant Secretary.

[FR Doc. 83-10404 Filed 4-15-83; 10:17 am]

BILLING CODE 4810-40-M

Customs Service

Removal of Prohibition on Importation of Tuna and Tuna Products From Ecuador and Peru

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This notice is to advise that under the Fishery Conservation and Management Act of 1976 ("the Act"), the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs has notified the Secretary of the Treasury that the reasons for the imposition of the prohibition on the importation of tuna and tuna products from Ecuador and Peru no longe prevail.

EFFECTIVE DATE: The prohibition against the entry for consumption or withdrawal from warehouse for consumption of tuna and tuna products from both Ecuador and Peru are removed effective April 19, 1983.

FOR FURTHER INFORMATION CONTACT: Harrison C. Feese, Entry, Examination, and Liquidation Branch, Duty Assessment Division, Office of Operations, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8651).

SUPPLEMENTARY INFORMATION:

Background

Section 205(a)(4)(C) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801, *et seq.*), provides that the Secretary of State shall certify to the Secretary of the Treasury any determination that a fishing vessel of the United States, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, has been seized by a foreign nation as a consequence of a claim of jurisdiction not recognized by the United States. The responsibility for this certification was delegated to the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs by Department of State Delegation of Authority No. 138 of April 29, 1977.

Pursuant to section 205(b) of the Act, upon receiving the certification, the Secretary of the Treasury is required to take such action as may be necessary and appropriate to prohibit the importation of all fish and fish products from the fishery involved.

Section 205(c) of the Act provides that if the Secretary of State finds that the reasons for the import prohibition under section 205 no longer prevail, the Secretary of State shall notify the Secretary of the Treasury, who shall promptly remove the import prohibition.

Ecuador

On November 21, 1980, a notice was published in the **Federal Register** (45 FR 77219) advising that under section 205(a)(4)(C) of the Act, on October 21, 1980, the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs certified to the Secretary of the Treasury that three United States fishing vessels,

while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, where seized by Ecuador as a consequence of a claim of jurisdiction which is not recognized by the United States. Under the authority of sections 205 (b) and (c) of the Act, on November 4, 1980, the Secretary of the Treasury determined that the entry for consumption or withdrawal from warehouse for consumption of tuna and tuna products from Ecuador was prohibited until the Department of State notified the Secretary of the Treasury that the reasons for this prohibition no longer prevailed.

On March 3, 1983, the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs informed the Secretary of the Treasury that the reasons for the imposition of the import prohibition on tuna and tuna products from Ecuador no longer prevail. Accordingly, the prohibition against the entry for consumption or withdrawal from warehouse for consumpton of tuna and tuna products from Ecuador is removed.

Peru

On February 22, 1980, a notice was published in the Federal Register (45 FR 11971) advising that under section 205(a)(4)(C) of the Act, on November 13, 1979, the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs certified to the Secretary of the Treasury that eight United States fishing vessels, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, were seized by Peru as a consequence of a claim of jurisdiction which is not recognized by the United States. Under the authority of sections 205 (b) and (c) of the Act, on February 7, 1980, the Secretary of the Treasury determined that the entry for consumption or withdrawal from warehouse for consumption of tuna and tuna products from Peru was prohibited until the Department of State notified the Secretary of the Treasury that the reasons for this prohibition no longer prevailed.

On March 4, 1983, the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs informed the Secretary of the Treasury that the reasons for the imposition of the import prohibition on tuna and tuna products from Peru no longer prevail. Accordingly, the prohibition against the entry for consumption or withdrawal from warehouse for consumption of tuna and tuna products from Peru is removed. However, it should be noted that imports of yellowfin tuna and tuna products from Peru are still prohibited under the Marine Mammal Protection Act.

Drafting Information

The principal author of this document was James S. Demb, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices of the Customs Service and the Treasury Department participated in its development.

Dated: April 8, 1983.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 83-10381 Filed 4-18-83; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

Advisory Committee on Cemeteries and Memorials; Meeting

The Veterans Administration gives notice that a meeting of the Administrator of Veterans Affairs' Advisory Committee on Cemeteries and Memorials, authorized by section 1001, title 38, United States Code, will be held in the Veterans Administration Central Office, 810 Vermont Avenue, NW, Washington, DC 20420, on May 16 and 17, 1983 in Room 119, Veterans Administration Central Office Conference Room, 1st Floor. The opening day session will begin at 9 a.m.

The meeting will be open to the public. However, because of extensive changes recently made in the membership of this Committee, the majority of the members will be meeting for the first time. Consequently, this meeting will be devoted mainly to administrative matters and background briefings necessary for the proper orientation of the new members in relation to the purpose of the Committee and the scope of its functions. It is not contemplated that any issues or substantive matters will be considered by the Committee at this meeting.

Those wishing to attend should contact Ms. Anne Chase in the Office of the Chief Memorial Affairs Director (phone 202–389–5202), not later than 12 noon, EDT May 13, 1983. Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should indicate this in a letter to the Chief Memorial Affairs Director (4) at the address furnished above. In any such letters, the writers must fully identify themselves and state the organization or association or person they represent. Also, to the extent practicable, the letter should indicate the subject matter they want to discuss. Oral presentations should be limited to 10 minutes in duration. Those wishing to file written statements to be submitted to the Committee must also mail, or otherwise deliver, them to the Chief Memorial Affairs Director. Letters and written statements as discussed above must be mailed or delivered in time to reach the Chief Memorial Affairs Director by 12 noon, EDT May 13, 1983. Oral statements will be heard only between 12 noon and 1 p.m. on May 17, 1983.

Dated: April 12, 1983.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 83-10388 Filed 4-18-83; 8:45 am]

BILLING CODE 8320-01-M

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document consists of an extended form. The entry contains the following information: (1) The department or staff office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(H) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the proposed form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (004A2), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC, 20420 (202) 389–2146. Comments and questions about the items on this list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503, (202) 395–7316.

DATE: Comments on the form should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: April 11, 1983.

By direction of the Administrator.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Extended Form

(1) Information and Regulations Staff.
(2) Application of Service Representative for Placement on Veterans Administration Mailing List.
(3) VA Form 00–3215.
(4) Once per applicant.
(5) Service organizations desiring to have a representative on the VA mailing list.
(6) 150 responses per annum.
(7) 25 hours.
(8) Not applicable under 3504(H).

[FR Doc. 83–10290 Filed 4–18–83; 8:45 am]

BILLING CODE 8320–01–M

Veterans Administration Wage Committee; Meetings

The Veterans Administration, in accordance with Pub. L. 92–463, gives notice that meetings of the Veterans Administration Wage Committee will be held on:

Thursday, April 28, 1983
Thursday, May 12, 1983
Thursday, May 26, 1983
Thursday, June 9, 1983
Thursday, June 23, 1983

The meetings will begin at 2:30 p.m. and will be held in Room 304, Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420.

The Committee's purpose is to advise the Chief Medical Director on the development and authorization of wage schedules for Federal Wage System (blue-collar) employees.

At these meetings the Committee will consider wage survey specifications, wage survey data, local committee reports and recommendations, statistical analyses, and proposed wage schedules.

All portions of the meetings will be closed to the public because the matters considered are related solely to the internal personnel rules and practices of the Veterans Administration and because the wage survey data considered by the Committee have been obtained from officials of private business establishments with a guarantee that the data will be held in confidence. Closure of the meetings is in accordance with subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and as cited in 5 U.S.C. 552b(c)(2) and (4).

However, members of the public are invited to submit material in writing to the Chairman for the Committee's attention.

Additional information concerning these meetings may be obtained from the Chairman, Veterans Administration Wage Committee, Room 1175, 810 Vermont Avenue, NW., Washington, DC 20420.

The appearance of this notice at least 15 days in advance of the meeting has been hindered due to delays in administrative processing.

Dated: April 11, 1983.

By direction of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 83–10289 Filed 4–18–83; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 76
Tuesday, April 19, 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 RESERVE SYSTEM

(Board of Governors)

TIME AND DATE: 10 a.m., Monday, April 25, 1983.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed renovation and expansion of the Federal Reserve Bank of Chicago. (This item was originally announced for a meeting on January 5, 1983)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. 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: April 15, 1983.

James McAfee,

Associate Secretary of the Board.

[S-544-83 Filed 4-15-83; 2:56 pm]

BILLING CODE 6210-01-M

2

NATIONAL COUNCIL ON THE HANDICAPPED

TIME AND DATE:

9–5:30, Monday, May 2, 1983
8:30–5:30, Tuesday, May 3, 1983
9–12, Wednesday, May 4, 1983

PLACE: Map Room, Kalorama Room, Conservatory, Washington Hilton Hotel, 1919 Connecticut Ave., Washington, D.C. 20009.

STATUS: Open meeting.

MATTERS TO BE CONSIDERED:

General Business including:
- Approval of minutes
- Approval of agenda
- Budget review
- Staffing
- Future meeting dates

Committee Meeting:
- Developing implementation plans for five issues areas.

Presentations:
- Private Sector Involvement "Priorities for the 1980's"

Note.—Any person requiring an interpreter or other special services, please contact NCH staff, no later than April 25, 1983

PERSON TO CONTACT FOR MORE INFORMATION: Hilda Gay Legg, Acting, Executive Director, National Council on the Handicapped, telephone: 245–3498.

[S-452-83 Filed 4-15-83; 10:52 am]

BILLING CODE 4000-01-M

3

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCMENT: 48 FR 15216, April 7, 1983.

STATUS: Open meeting.

PLACE: 450 5th Street NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Monday, April 4, 1983.

CHANGES IN THE MEETING: Additional item. The following additional item was considered at an open meeting scheduled for Thursday, April 14, 1983, at 10:00 a.m.:

Consideration of a release announcing the adoption of proposed amendments to Securities Exchange Act Rule 10b–10 (17 CFR 240.10b–10) to : (1) Permit broker-dealers to use monthly account statements in lieu of immediate confirmations in connection with transactions in shares of certain investment companies that seek to maintain a constant net asset value, and (2) require various confirmation disclosures relating to yield and call features of debt securities. For further information, please contact Ardith Eymann at (202) 272–2844.

Chairman Shad and Commissioners Evans and Longstreth determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any matters have been added, deleted or postponed, please contact: Jerry Marlatt at (202) 272–2092.

April 14, 1983.

[S-543-83 Filed 4-15-83; 11:25 am]

BILLING CODE 8010-01-M

federal register

Tuesday
April 19, 1983

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Surface Mining and Reclamation Operations Federal Program; South Dakota

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 941

Surface Mining and Reclamation Operations Under a Federal Program for the State of South Dakota

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

ACTION: Interim final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the Department of the Interior promulgates a Federal program for regulation of coal exploration and surface coal mining and reclamation operations on non-Federal and non-Indian lands in South Dakota. This includes surface effects of underground coal mining. This program is necessary in order to regulate surface coal mining activities in the absence of a State program.

DATES: Written comments will be accepted until 5:00 pm M.s.t. August 17, 1983, at the address below. The effective date of this program is May 19, 1983.

ADDRESSES: For information with respect to implementation of the program, contact, by mail, Office of Surface Mining, Wyoming Field Office, P.O. Box 1420, Mills, Wyoming 82644; or, in person, Office of Surface Mining, Wyoming Field Office, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644. Telephone: (307) 261–5778.

FOR FURTHER INFORMATION CONTACT: James M. Kress, Office of Surface Mining, Branch of Regulatory Programs, Room 222, 1951 Constitution Avenue, NW, Washington, D.C. 20240; Telephone: (202) 343–5866.

SUPPLEMENTARY INFORMATION:

Availability of Copies

Copies of the final regulatory program are available for inspection and may be obtained at the OSM office listed above in "ADDRESSES."

Public Comment Period

Because the date for promulgating Federal programs for States that do not have primacy has passed, the effective date for the South Dakota Federal program will be May 19, 1983. However, because OSM has not promulgated pending revisions to the permanent program regulations on which the South Dakota program is based, persons may wish to make comments about the new regulations and their effect on South Dakota as applied through the South Dakota Federal program. OSM, therefore, will accept comments on the South Dakota Federal program as it is affected by OSM's revisions to the permanent program regulations until the close of business on August 17, 1983 at the location listed under "**ADDRESSES.**"

All written comments received, summaries of public meetings held at the request of any person or organization to receive advice and recommendations concerning the program with representatives of OSM, and other documents comprising the administrative record on the South Dakota Federal program will be made available for public review during regular business hours at the location listed above under "ADDRESSES."

Comments should be as specific as possible, focus on the issues of this rulemaking, and provide reasons for any recommendations. OSM will not consider comments that do not pertain to the issues in this rulemaking. Nor can OSM ensure consideration of comments recieved after the comment period ends or those delivered to an address other than that specified.

Because a public hearing was held for the proposed South Dakota Federal program, none will be scheduled during the interim final rule comment period. Persons wishing to meet with OSM officials should contact the person listed above under "**FOR FURTHER INFORMATION CONTACT**" in order to schedule such a meeting.

Background

Under Section 504(a) of the Surface Mining Control and Reclamation Act of 1977 (the Act), Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*, the Secretary of the Interior (the Secretary) is required to promulgate a Federal program within 34 months after passage of the Act if a State fails to submit a program to assume responsibility for regulating surface mining activities, fails to resubmit a program within 60 days of disapproval, or fails at any time to implement, enforce, or maintain an approved State program. The time for submitting State programs was extended by seven months to March 3, 1980, as the result of litigation, *In re: Permanent Surface Mining Regulation Litigation*, 13 Envir. Rep. Cas. 1447 (July 25, 1979). The date for the required implementation of a Federal program in any State which did not submit a program to obtain primary regulatory responsibility has passed.

An additional standard for the promulgation of a Federal program is found in 30 CFR Part 736. It requires the implementation of a Federal program for a State where the Director of OSM (the Director) "reasonably expects coal exploration or surface coal mining and reclamation operations to exist on non-Federal and non-Indian lands * * * at any time before June 1985 * * * " 30 CFR 736.11(a)(1).

The State has identifiable coal reserves, but failed to submit a program to the Secretary to obtain primary regulatory responsibility. There is a reasonable expectation that either coal exploration or surface coal mining will occur in South Dakota on non-Federal and non-Indian lands before June 1985. Therefore, pursuant to 30 CFR 736.11, the Director must promulgate and implement a Federal program.

Once a decision has been made that a Federal program is necessary for a State, the Secretary must make several determinations before promulgating a program. Section 504(a) of the Act requires that, in implementing a Federal program, the Secretary must take into consideration the nature of the State's terrain, climate, biological, chemical, and other relevant physical conditions. This requirement is also found in the regulations for Federal programs, 30 CFR 736.22(a)(1). The Act (Section 505(b)) and the regulations (Section 736.23(b) also provide that if a State has more stringent land use and environmental laws or regulations, they shall not be construed to be inconsistent with the Act or the Secretary's regulations. The Secretary believes that the requirements of Section 505(b) can best be met by identifying State laws and regulations which impose more stringent environmental controls and listing them in this Federal program. Those South Dakota laws which establish more stringent standards than does the Act or the Secretary's regulations, or which regulate or protect an aspect of the environment which neither the Act nor the Secretary's regulations protect, have been listed at § 941.700(e) and are specifically preserved under this Federal program. However, by identifying more stringent State environmental controls in a Federal program, OSM does not assume any responsibility for enforcing such State laws. That would be left to the State.

Also, in promulgating a program for a State, Section 504(g) specifies that any State statutes or regulations which regulate surface mining and reclamation operations and which interfere with the achievement of the purposes and requirements of the Act and Federal program are to be identified by the Secretary and superseded and preempted. This provision is reinforced by Section 505(a) of the Act which states that only those State laws which are inconsistent with the Act shall be

superseded by the Federal program. Thus, State statutes and rules regulating the same activities as those covered by the Federal law and regulations and which do not provide as much protection as do the Federal law and regulations are considered to interfere with achievement of the purposes of the Act. Accordingly, they must be identified and preempted by OSM.

Federal programs are based on the Secretary's permanent program regulations. 30 CFR Subchapters A, F, G, J, K, L, and M. The permanent program regulations implement the procedures and performance standards of the Act, and form the benchmark for State programs. In order for a State to have a program approved by the Secretary, Section 503(a)(7) requires that the State's rules and regulations be consistent with the Secretary's regulations.

The parts of the permanent program regulations that must be included in a Federal program are listed at 30 CFR 736.22(b). They include general requirements and definitions (Parts 700 and 701), the exemption for coal extraction incident to government-financed highway or other construction (Part 707), the designation of lands unsuitable for surface mining (Parts 760, 761, 762, and 765), permits and permit applications (Subchapter G), reclamation bonding (Subchapter J), performance standards (Subchapter K), inspection and enforcement (Parts 842, 843 and 845), and blaster training and certification (Subchapter M). In addition, the provision in the permanent regulations on protection of employees (Subchapter P) and restrictions on financial interests (Part 706) are applicable to Federal employees who perform functions or duties under the Act.

The rules for the permanent program are found in 30 CFR Parts 700 through 707 and 730 through 865. Part 705 was published October 20, 1977 (42 FR 56064). Parts 795 and 865 (originally Part 830) were published December 13, 1977 (42 FR 62639). The other permanent program regulations were published at 44 FR 15323–15393 (March 13, 1979). Subchapter M was published on December 12, 1980 (45 FR 82098). Corrections were published at 44 FR 15485 (March 14, 1979); 44 FR 53507–53509 (September 14, 1979); 44 FR 66195 (November 19, 1979); 45 FR 26001 (April 16, 1980); 45 FR 37818 (June 5, 1980); and 45 FR 47424 (July 15, 1980). Amendments to the rules have been published at 44 FR 60969 (October 22, 1979) as corrected at 44 FR 75143 (December 19, 1979); at 44 FR 77440–77447 (December 31, 1979); 45 FR 2626–2629 (January 11, 1980); 45 FR 25998–26001 (April 16, 1980); 45 FR 33926–33927 (May 20, 1980); 45 FR 39446–39447 (June 10, 1980); 45 FR 52306–52324 (August 6, 1980); 45 FR 52375 (August 7, 1980); 45 FR 58780–58786 (September 4, 1980); and 45 FR 76932 (November 20, 1980); 46 FR 37232 (July 17, 1981); 46 FR 41702 (August 17, 1981); 46 FR 47720 (September 29, 1981); 46 FR 53376 (October 28, 1981); 46 FR 59934 (October 26, 1981); 46 FR 32942 (July 30, 1982); 47 FR 33431 (August 2, 1982); 47 FR 35620 (August 16, 1982); 47 FR 38486 (August 31; 1982); 47 FR 44942 (October 12, 1982); 47 FR 47212 (October 22, 1982); 47 FR 51316 (November 12, 1982); 48 FR 1160 (January 10, 1983); and 48 FR 2266 (January 18, 1983).

Representatives of industry, two States and several environmental groups challenged the permanent regulatory program in the U.S. District Court for the District of Columbia. These suits were consolidated and heard in a single lawsuit entitled *In re: Permanent Surface Mining Regulation Litigation* (Civil Action No. 79–1144). In response to the arguments raised in the challenges, the Secretary voluntarily suspended several permanent program regulations. These suspensions were announced in the **Federal Register** on November 27, 1979 (44 FR 67942); December 31, 1979 (44 FR 77447–77454); January 30, 1980 (45 FR 6913); and August 4, 1980 (45 FR 51547–51550). In two opinions the Court remanded certain other regulations which had been challenged in the lawsuit. These opinions were issued on February 26, 1980, and May 16, 1980. Many of the issues decided by the District Court were appealed to the Court of Appeals for the District of Columbia Circuit. *In re: Permanent Surface Mining Regulation Litigation*, Nos. 80–1810, 80–1811, 80–1812, 80–1813 and 80–1823. The appeals were remanded to the District Court for the District of Columbia on February 1, 1983, in order for the issues to be reconsidered in light of revision of the permanent program rules discussed below.

South Dakota Federal Program

In the **Federal Register** on August 10, 1982, (47 FR 34760) OSM proposed a program to regulate coal exploration and surface coal mining and reclamation in South Dakota and announced a comment period that extended from the date of proposal to October 12, 1982. Two written requests were received asking that the hearing date initially set for September 20, 1982, be moved back so more time would be available to prepare. The hearing date was moved to October 5, 1982, by a notice in the **Federal Register** on September 17, 1982, 47 FR 41142. Two persons presented testimony at the hearing and two organizations submitted written comments on the proposed regulatory program. Their comments are discussed below under "Disposition of Public Comments."

As mentioned above, when promulgating a Federal program for a State, the Secretary is required by section 504(a) of the Act to take into consideration the nature of the terrain, climate, biological, chemical, and other relevant physical conditions of that State. The Secretary has fulfilled this mandate by reviewing South Dakota laws and regulations on the assumption that those laws accurately reflect unique or unusual environmental conditions found in the State and by considering comments submitted on the proposed South Dakota Federal program.

Pursuant to section 504(a), the Secretary becomes the regulatory authority when a Federal program is implemented for a State. The permanent program regulations contain references to "the regulatory authority" and to "the State regulatory authority," both of which mean the Secretary when a Federal program is involved. Section 701(22) of the Act. The Secretary has delegated all authority for surface coal mining activities to the Director of the Office of Surface Mining (the Director), who is the official responsible for implementing the South Dakota Federal program.

One commenter, as indicated below under "Disposition of Comments," requested that OSM further postpone promulgation of the South Dakota Federal program until after promulgation of OSM's revisions of the permanent program rules on which this Federal program is based. OSM recognizes the difficulty created by the contemporaneous promulgation of this program and the revisions of the permanent program rules, and the complications that presents in light of the use of cross-referencing, as explained below, for the substance of the program rules. Nevertheless, OSM believes that the Act does not allow such a delay in the promulgation of this program, since section 504(a) of the Act sets a deadline by which Federal programs must be promulgated. However, OSM has chosen to publish the South Dakota Federal program as an interim final rule in order to facilitate any required modification resulting from the imminent promulgation of revisions to the permanent program rules on which it is based.

As announced above, there will be a public comment period of 120 days from the date of publication of this interim final rule. The revisions to the permanent program rules are expected to have been published by the end of the post-publication comment period. This 120-day period will allow commenters to review the South Dakota Federal program as it is affected by OSM's imminent revisions of the permanent program rules. Should readers believe that the changes in those rules make modifications to the South Dakota Federal program necessary or desirable, those suggested modifications should be brought to OSM's attention during the post-publication comment period. OSM will consider any comments submitted during this period, and by further rulemaking notice will either modify or affirm the South Dakota Federal program as promulgated today.

Explanation of Cross-Referencing

To take advantage of the results which revision of the permanent program regulations will achieve, OSM has developed and promulgated this Federal program in the following manner. Rather than repeating the full text of the permanent regulations, there is instead only a cross-reference to the appropriate permanent program regulations. For example, criteria for the designation of lands unsuitable for surface coal mining are provided by making the criteria in 30 CFR Part 762 applicable to this program (see § 941.762).

One effect of the cross-referencing to the permanent program regulations is that as the permanent program regulations are revised, this Federal program will be similarly revised. Over time, all of the permanent program regulations will undergo review and many will be revised. No separate rulemaking will be undertaken or necessary for revision of this program, however, unless OSM determines that special conditions are present which necessitate different rules for South Dakota. In any case, the promulgation of this cross-referencing Federal program does not modify the substance of OSM's permanent program rules.

In the general notice of intent to promulgate Federal programs of May 16, 1980 (45 FR 32228), OSM stated that each Federal program would be specific to the particular State and would implement the permanent program procedures and environmental protection provisions of the Act (45 FR at 32229). However, except for changes to incorporate more stringent State environmental protection standards, to accommodate unique or unusual environmental conditions, and to list other State laws requiring permits for which coordination is required, OSM believes that few changes are needed in the permanent program regulations for any particular State for which a Federal program must be promulgated.

A notice concerning both the proposed and final permanent program rules appeared on July 13, 1982, in connection with the availability of a draft supplemental environmental impact statement on the permanent program rules. 47 FR 30266–67. It advised the public that any change in a permanent program rule would also result in a corresponding change in this program, absent special conditions. The statement invited comments on necessary modifications to accommodate unique or unusual aspects of surface mining in any Federal program State so that the Federal program for such a State could be tailored as necessary.

Several provisions of the permanent program regulations are already applicable to all Federal programs because they were fully promulgated for application to all regulatory programs and, therefore, need not be cross-referenced here. Those provisions are 30 CFR Chapter VII, Subchapter P—Protection of Employees; Part 706—Restrictions on Financial Interests of Federal Employees; and Part 769—Petition Process for Designation of Federal Lands Unsuitable for Surface Coal Mining. 30 CFR Part 764—Designating Areas Unsuitable for Surface Coal Mining has been included in this program by a cross-reference under § 941.764 to provide a petition process on non-Federal lands in South Dakota. Also, Part 760 has not been included because its provisions do not include any substantive requirements. Instead, they impose requirements on the Secretary and his delegates which need not be incorporated in each Federal program. Part 765 was also not included because it is directly applicable to a Federal program State without being incorporated or cross-referenced.

With regard to bonding regulations (Subchapter J), only Part 800 is cross-referenced because OSM has proposed to revise Subchapter J to include just one part, Part 800. 46 FR 45082 (September 9, 1981). Should the South Dakota Federal program become effective before the final rule notice revising the bonding regulations appears, and the bonding rules not be revised by the time a permit under this Federal program is to be issued, as a condition of issuance of that permit the applicant will be required to abide by the then-effective bonding rules until such rules are superseded.

Content and Organization of the Program

The content and organization of the South Dakota Federal program generally follow the permanent program regulations. But, as discussed above, instead of the full text appearing here, each section includes only a reference to the pertinent permanent program regulations. To examine the full text of the permanent program regulations, reference must be made to the cited sections of Title 30 of the Code of Federal Regulations.

Sections 941.700 (e) and (f), respectively, identify State statutes that are more stringent than, and those that are inconsistent with the Act. Where specific provisions are needed for South Dakota that are different from the permanent program regulations, a separate paragraph has been added to the appropriate section.

The rulemaking notice proposing this program indicated that legislation recently enacted in South Dakota to regulate mined land reclamation, HB 1001 and HB 1002, which were to take effect on July 1, 1982, would be largely superseded by the Federal program. Those bills have been codified at Chapters 45–6B and 45–6C of South Dakota compiled laws annotated (S.D. Comp. Laws Ann.) (1967). The State statutes identified in § 941.700(f) (1) and (2) are superseded except for S.D. Comp. Laws Ann. Chapters 45–6B and 45–6C, Sections 45–6B–33(1)–(5) and 45–6C–16, –19, –27, and –28. The just-cited sections have not been superseded, since they set more stringent standards than do the corresponding Federal permanent program rules, and are identified in § 941.700(e) (1) and (2) as being specifically preserved.

Other State laws which were identified in the proposed rulemaking notice as setting more stringent standards than the Federal rules are also listed in the final program rules in § 941.700(e)(3)–(8). These are State laws governing weed control, S.D. Comp. Laws Ann. Chap. 38–22; the protection of fishing waters, S.D. Comp. Laws Ann. Chap. 41–13; remedies for the protection of the environment, S.D. Comp. Laws Ann. Chap. 34A–10; air pollution control, S.D. Comp. Laws Ann. Chap. 34A–1; water pollution control, S.D. Comp. Laws Ann. Chap. 34A–2; and solid waste disposal, S.D. Comp. Laws Ann. Chap. 34A–6. The basis for OSM's determination that these State statutes set more stringent land use and

environmental controls than do the Federal Act and regulations is explained in the proposed rule notice, 47 FR 34763–64. No regulations have yet been promulgated by the State pursuant to the mined land reclamation and mineral exploration laws, S.D. Comp. Laws Ann. Chap. 45–6B and 45–6C. Thus, there are at present no such regulations either to preserve or supersede.

Section 941.700(e), preserving South Dakota's groundwater law at S.D. Comp. Laws Ann. Chap. 46–6, has been added in response to public comment (see Comment 8, below).

Three States statutes were identified in proposed § 941.770(b) as those with which the Secretary would coordinate the issuance of the Federal surface mining permit and permits required by South Dakota: (1) air pollution control, S.D. Comp. Laws Ann. Chap. 34A–1; (2) water pollution control, S.D. Comp. Laws Ann. Chap. 34A–2; and (3) solid waste disposal, S.D. Comp. Laws Ann. Chap. 34A–6. These laws are also listed in the final rule.

The proposed rule provided that no person could conduct coal exploration or surface coal mining and reclamation operations regulated under a Federal program without also having a permit issued under the three State statutes. A Paragraph (c) has been added to the § 941.770 in the final rule to provide that the Federal permit will not be issued until an applicant has obtained the permits identified in Paragraph (b). This makes issuance of a Federal permit contingent on an operator having first demonstrated compliance with State laws by having obtained the South Dakota permits listed in Paragraph (b).

Proposed §§ 941.815(b), 941.816(b), and 941.817(b) have been deleted from the final rule, because it is neither required nor desirable that OSM enforce State laws. This deletion does not affect any responsibility operators may have to comply with, or South Dakota to enforce, State laws not specifically superseded under § 941.700(f). The Secretary believes that the coordination mechanism created under § 941.770(b), as discussed above, adequately enables OSM and South Dakota to carry out their respective enforcement responsibilities without either gaps or duplication.

OSM has revised Part 850 of the permanent program rules. The revision transfers the responsibility for setting standards, training, and certifying blasters from OSM to the States. Because this leaves States with Federal programs without a blaster certification program, OSM will promulgate standards for blaster training and certification for Federal program States at a later date.

Disposition of Public Comments

Substantive comments were received from three parties: representatives of the South Dakota Department of Water and Natural Resources who testified at the hearing; the U.S. Fish and Wildlife Service; and the Technical Information Project, representatives of which both testified at the hearing and submitted written comments.

1. The representatives of the South Dakota Department of Water and Natural Resources, which is the State agency regulating mining, stated that coordination was needed between their agency and OSM to avoid duplication in the permit process, and implied that the State would continue to issue permits under its laws regulating mining.

The Federal program promulgated here supersedes South Dakota's laws regulating coal exploration and surface coal mining and reclamation, except to the extent some provisions are specifically preserved in § 941.700(f). There would than be no State mining permit required for coal. State permits, however, would be required under other State laws identified in § 941.770(b), and the Secretary fully intends to coordinate issuance of the SMCRA permit with South Dakota's action on the permits listed there.

The State agency representatives also mentioned that the public hearing process required under State law could be meshed with the public involvement required by OSM in the permitting process. OSM agrees, and will coordinate with the State for public involvement under the South Dakota laws identified in § 941.770(b). However, since the public involvement provisions of South Dakota's mined land reclamation and mineral exploration laws are superseded by the Federal program, they are no longer applicable under this program.

2. The Acting Regional Director of the Fish and Wildlife Service in Denver raised two issues of concern to that agency. First, he requested that provisions be included in the South Dakota Federal progam for implementing the Endangered Species Act, 16 U.S.C. Section 1531 *et seq.*, and the Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661–667, as required by 30 CFR 736.22(a), and for the solicitation of comments from agencies having special expertise, as required in 30 CFR 736.13(a).

Section 941.786(a) of the South Dakota Federal program provides for compliance with the Endangered Species Act. That section cross-references 30 CFR Part 786—Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions. Section 786.19(c) of that part requires the regulatory authority, when issuing a permit, to find that the activities would not affect endangered or threatened species or result in the destruction or adverse modification of their critical habitats.

The South Dakota Federal program also requires compliance with the Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et seq.*, particularly the consultation requirement of Section 662(a) of that Act. Under the Coordination Act, consultation with the Fish and Wildlife Service is required if any project would require a dam or diversion of a stream or body of water in order to conserve wildlife resources. Section 786.17(a)(2) requires the regulatory authority to determine whether a fish and wildlife plan submitted by an operator is adequate. In doing so, the regulatory authority must consult with Federal and State fish and wildlife management agencies. Although no fish and wildlife plan is required of a permit applicant, as discussed below, the consultation requirement of the regulation remains, as does the statutory requirement under the Coordination Act. Therefore, no additional provision need be added to the South Dakota program.

The Fish and Wildlife Service also requested that 30 CFR 779.20 and 780.16, requiring fish and wildlife resources information and a plan from a permit applicant, be included in the South Dakota program.

The Federal District Court in *In re: Permanent Surface Mining Regulations Litigation*, Civ. No. 79–1144, D.C., remanded 30 CFR 779.20 and 780.16. The District Court in its memorandum opinion of February 26, 1980, 14 Envir. Rep. Cas. 1083, 1098, remanded the two regulations because it could find no support for the information and plan requirements in the permit information section of the Act, Section 507. Only the performance standards of the Act, Section 515(b)(7), provide for the protection of fish and wildlife. The Court held that OSM had no authority to require the information; therefore, OSM cannot now reimpose these requirements.

3. The Technical Information Project (TIP) raised a number of issues. Their initial comment questioned whether adequate public notice of the proposed program had been given, especially in light of the extensive revision of the permanent program regulations on which the South Dakota Federal

program is based. They requested that the comment period be extended, so they could have an adequate opportunity to review the pending revisions to the permanent program regulations as they affect South Dakota.

OSM agrees that more time would be helpful for some reviewers, but believes also that the Act and circumstances compel promulgation of the South Dakota Federal program now. The publication of this program as an interim final rule, however, is intended to allow OSM to meet its statutory mandate while enabling reviewers more time for their analyses.

4. The TIP next asked four questions about the cross-referencing of the permanent program rules and revision of the rules. First, they asked whether notice of the revisions to the permanent program rules, which form the basis for the Federal program, would be given in local newspapers in South Dakota.

Notice of the revision to the permanent program rules is required and given only in the **Federal Register**. In instances such as the large scale revision to the OSM rules, notice is given also to persons, States, and organizations known by OSM to be interested in or affected by the rules. No notice is required or given in local newspapers.

5. The TIP next asked for clarification as to whether public hearings on the permanent program rules revision would be held on "a National level, and not in South Dakota."

Hearings on the permanent program rules revisions were held in Denver, Colorado and Washington, D.C. No other public hearings were held, although meetings with OSM officials to discuss the revisions could have been held in any OSM field office.

6. The TIP also asked for clarification of the comment period on the draft supplemental Environmental Impact Statement (EIS), and whether it was closed to comments on possible effects the proposed changes may have on South Dakota.

A notice of availability of the draft supplemental EIS was published in the **Federal Register** on June 18, 1982 (47 FR 26405), and a comment period of 60 days was initially provided. A notice which appeared on July 13, 1982 (47 FR 30266), announced that the comment period on proposed rule revisions would close on August 25, 1982, and invited comments on those proposed rules as they might affect particular States for which Federal programs were being prepared.

The EIS comment period was extended to a total of 85 days to allow comments made at a congressional oversight hearing in early September to be considered. Further extension of the comment period on the EIS would have delayed an already lengthy process, which first began in June 1981. OSM chose not to extend the EIS comment period, because it would have imposed an unacceptable delay in the final EIS and final promulgation of the revised permanent program rules. As there currently is no coal mining in South Dakota, OSM concluded that this Federal program could be promulgated now and modified as comments or circumstances make advisable without undue hardship on those regulated by, or otherwise interested in the program. Therefore, OSM is promulgating the South Dakota Federal program as an interim final rule with a comment period of 120 days to allow comment on the program as it is affected by the pending revisions to the permanent program rules.

7. The TIP's final question on promulgation was whether there will be another review of South Dakota's laws to determine if they are more stringent than the final revised permanent program rules.

No such review of State laws is planned after the permanent program regulation revisions become final. OSM agrees, however, that the revision of a Federal rule could result in it being less stringent than a State statute or regulation. Therefore, OSM invites comment on whether and how OSM's revisions to the permanent program regulations affect the determinations made under § 941.700 (e) and (f) of this program after OSM has completed publication of the revised rules.

8. The TIP also made technical comments. The Project first commented on the depletion of water in aquifers containing coal seams in neighboring areas of North Dakota causing a loss of groundwater to ranches and farms. They questioned whether South Dakota's groundwater law (S.D. Comp. Laws Ann. Chap. 46–6, particularly Section 46–6–3.1), which prohibits the withdrawal of water from an aquifer exceeding its average estimated recharge capacity is not more stringent than the Federal standards.

OSM agrees and accepted this comment. There is no provision in the Federal Act or regulations which limits the withdrawal of groundwater. Section 515(b)(10) of the Act only requires that the effect of mining on the hydrologic balance be minimized by, *inter alia*, restoring the recharge capacity of the mined area to its premining conditions. Thus, the cited South Dakota provision is more stringent and has been added to the listing of State laws in § 941.700(e).

9. The TIP stated that OSM has not incorporated any special provisions to take into consideration any of South Dakota's particular terrain and climate or other physical conditions as specified in section 504(a) of the Act. They stated that the management plan for the Sioux Ranger District of the Custer National Forest concluded that there is lack of proven reclamation for the area and that surface mining should not be approved in the District. They suggested that OSM should consider whether the conditions in the Custer National Forest which make mining unsuitable are not also present in northwestern South Dakota, where the State's coal deposits are located. Furthermore, they pointed out there are numerous wooded draws in the area where lignite outcrops are discharging water used by wildlife and livestock. These draws also are covered by diverse vegetation. They suggested that OSM incorporate reclamation standards to reconstruct the wooded areas.

OSM has not accepted this comment. Section 522 of the Act provides for the designation of lands as unsuitable for surface coal mining and establishes a petition process for doing so, although Section 504(a) specifies that the petition process cannot begin until one year after the promulgation of a Federal program. *See* § 941.764. Further, section 522(e)(2)(B) of the Act does not permit surface coal mining within the boundaries of the Custer National Forest. Finally, Section 522(e) of the Act prohibits coal mining within the boundaries of national parks, wildlife refuges, wilderness areas, scenic rivers, and, with some qualifications, on Federal lands in a national forest. The petition process mentioned above is the appropriate mechanism by which the public may request that the Secretary prohibit surface coal mining in areas they believe to be unsuitable to mining. The Secretary believes that these provisions, along with the other requirements of the Act and this Federal program, ensure adequate protection for South Dakota.

As for the suggestion that the wooded draws in the northwest section of the State constitute a "special condition," the Technical Information Project has provided too little information on which OSM could base a decision to add to or modify the requirements of the South Dakota Federal program as proposed. The Secretary believes that the Federal Act and the program promulgated here already impose sufficiently stringent standards to require that draws be reconstructed. For example, section 515(b)(2) requires that the land be

restored to a condition capable of supporting the premining uses or higher or better ones.

10. The Technical Information Project also pointed out that the lignite deposits in South Dakota frequently contain uranium in economic concentrations. They suggested that OSM require a person who has relinquished rights to other minerals that may be found with coal to so indicate in order that OSM's regulating of exploration in such an instance would be exclusive. They also suggested that the State's laws and regulations on radiation exposure control may have more stringent requirements, such as a pre-operational radiological monitoring plan.

The Federal program promulgated here regulates only coal exploration and surface coal mining and reclamation. Regulation of radiological monitoring under the State's law, S.D. Comp. Laws Ann. Chap. 34–21, would not interfere with the purposes of a Federal program, and therefore, has not been superseded. Further, Section 505(b) of the Act does not require that more stringent State laws be identified in a Federal program; they need only be construed as not inconsistent with a Federal program. Thus, State laws do not necessarily have to be listed in § 941.700(e) of the Federal program to be preserved.

However, because the presence of radioactivity in the coal may be unique to South Dakota, a new paragraph has been added to § 941.700 to allow for a variance from specified performance standards to be granted. The basis for this provision is Section 504(a) of the Act, which requires the Secretary to take into consideration environmental conditions in a State in promulgating a Federal program. In part, OSM fulfills that requirement by reviewing State laws to determine whether any set more stringent standards than do the Act and the permanent program rules. This is based on the presumption that if there are any special or unique environmental conditions in a State, the State will have recognized them and provided for protection of those values through State laws. The Secretary recognizes, however, that there can be instances where environmental conditions exist which are not specially treated under State law. Section 941.700(g) has been added to the final rule to provide for those special circumstances. It requires a permit applicant to make an affirmative demonstration that a variance from particular performance standards in §§ 941.815 through 941.828 is necessary due to South Dakota's unique terrain and climate or biological, chemical, or other relevant physical conditions. OSM solicits comment of the addition of this provision.

11. The TIP also requested that OSM require persons exploring for coal who have relinquished rights to the discovery of any other minerals, so to indicate in order to assure that uranium exploration is not involved.

OSM has not accepted this suggestion. There is no basis in the Act or regulations for establishing such a requirement, nor is there any conflict between OSM regulation of coal exploration and State regulation of uranium exploration under S.D. Comp. Laws Ann. Chap. 45–6D.

12. The TIP next pointed out that with what TIP termed the "relaxation" of the permanent program rule standards it may be more difficult to convince ranchers of successful reclamation of mined lands.

Ranchers who own the subsurface coal underlying their lands are in a position to prevent development simply by refusing to sell or lease the coal. However, where the coal is owned by the Federal government and the surface is subject to a lease or permit issued by the Federal government, the application for a permit must include the written consent of the permittee or lessee, or show in lieu thereof, evidence of a bond, in addition to a performance bond, which would secure payment of any damages to the surface estate. (*See* Section 715 of the Act).

13. Finally, The TIP inquired whether Carson, Dewey, and Ziebach Counties, which have coal resources underlying them, would be regulated as Indian lands since they fall entirely within the Cheyenne River and Standing Rock Indian reservations.

This program extends only to non-Federal and non-Indian lands. The term "Indian lands" is defined in Section 701(9) as all lands within the exterior boundaries of a Federal Indian reservation. The coal resource in the three counties would be regulated under 25 CFR Part 216, even if owned in fee by non-Indians.

Other Information

The information collection requirement(s) contained in §§ 941.764, 941.770, 941.771, 941.795, and 941.800 do not require approval by the Office of Management and Budget under 44 U.S.C. 3507, because there are fewer than ten respondents annually. If in the future the number of respondents appears to be increasing, the proper forms, if they differ from those already approved, will be submitted to the Office of Management and Budget with accompanying notices in the **Federal Register**, in accordance with the requirements of 44 U.S.C. Ch. 35

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

The reasons underlying this determination are as follows: This Federal program would not 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 foreign markets; nor would it increase costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions. There will be no significant demographic effects, direct costs, indirect costs, nonquantifiable costs, competitive effects, enforcement costs, or aggregate effects on small entities.

The Office of Surface Mining Reclamation and Enforcement has determined that this rule is categorically excluded from compliance with the National Environmental Policy Act in accordance with 40 CFR 1507.3

Drafing Information

These regulations were drafted by David E. Jones, Office of the Solicitor, and James M. Kress, Branch of Regulatory Programs, Office of Surface Mining.

List of Subjects in 30 CFR Part 941

Coal mining, Intergovernmental relations, Surface mining, Underground mining, Reporting requirements.

Dated: March 29, 1983.

William P. Pendley,

Acting Assistant Secretary, Energy and Minerals.

30 CFR Chapter VII is amended by adding Part 941 to read as follows:

PART 941—SOUTH DAKOTA

Sec.

941.700 South Dakota Federal Program.
941.701 General.
941.707 Exemption for coal extraction incident to Government-financed highway or other construction.
941.761 Areas designated unsuitable for surface coal mining by act of Congress.
941.762 Criteria for designating areas as unsuitable for surface coal mining operations.
941.764 Process for designating areas unsuitable for surface coal mining operations.

Sec.
941.770 General requirements for permit and exploration procedures.
941.771 General requirements for permits and permit applications.
941.776 General requirements for coal exploration.
941.778 Surface mining permit applications—minimum requirements for legal, financial, compliance, and related information.
941.779 Surface mining permit applications—minimum requirements for information on environmental resources.
941.780 Surface mining permit applications—minimum requirements for reclamation and operations plan.
941.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.
941.783 Underground mining permit applications—minimum requirements for information on environmental resources.
941.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.
941.785 Requirements for permits for special categories of mining.
941.786 Reviews, public participation, and approval or disapproval of permit applications and permit terms and conditions.
941.787 Administrative and judicial review of decisions on permit applications.
941.788 Permit review, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.
941.795 Small operator assistance.
941.800 General requirements for bonding of surface coal mining and reclamation operations.
941.815 Performance standards—coal exploration.
941.816 Performance standards—surface mining activities.
941.817 Performance standards—underground mining activities.
941.818 Special performance standards—concurrent surface and underground mining.
941.819 Special performance standards—Auger mining.
941.822 Special performance standards—operations in Alluvial valley floors.
941.823 Special performance standards—operations on prime farmland.
941.824 Special performance standards—mountaintop removal.
941.826 Special performance standards—operations on steep slopes.
941.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.
941.828 Special performance standards—in situ processing.
941.842 Federal inspections.
941.843 Federal enforcement.
941.845 Civil penalties.

Authority: Pub. L. 95–87, The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.*, 91 Stat. 445.

§ 941.700 South Dakota Federal Program.

(a) This Part contains all rules that are applicable to surface coal mining operations in South Dakota which have been adopted under the Surface Mining Control and Reclamation Act of 1977.

(b) The rules in this part cross-reference pertinent parts of the permanent program regulations in this chapter. The full text of a rule is in the permanent program rule cited under the relevant section of the South Dakota Federal program.

(c) The rules in this part apply to all surface coal mining operations in South Dakota conducted on non-Federal and non-Indian lands. The rules in Subchapter D of this chapter apply to operations on Federal lands in South Dakota.

(d) The information collection requirements contained in §§ 941.764, 941.770, 941.771, 941.795, and 941.800 do not require approval by the Office of Management and Budget under 44 U.S.C. 3507 because there are fewer than ten respondents annually.

(e) The following provisions of South Dakota laws provide, where applicable, for more stringent environmental control and regulation of surface coal mining operations than do the provisions of the Act and the regulations in this chapter. Therefore, pursuant to section 505(b) of the Act, they shall not be construed to be inconsistent with the Act:

(1) South Dakota Compiled Laws Annotated (S. D. Comp. Laws Ann.) Chap. 45–6B, Section 33(1)–(5) on lands unsuitable for mining.

(2) S. D. Comp. Laws Ann. Chap. 45–6C, Sections 16, 19, 27, and 28.

(3) Weed Control, S. D. Comp. Laws Ann. Chap. 38–22.

(4) Protection of fishing waters, S. D. Comp. Laws Ann. Chap. 41–13.

(5) Remedies for protection of the environment, S. D. Comp. Laws Ann. Chap. 34A–10.

(6) Air pollution control, S. D. Comp. Laws Ann. Chap. 34A–1.

(7) Water pollution control, S. D. Comp. Laws Ann. Chap. 34A–2.

(8) Solid waste disposal, S. D. Comp. Laws Ann. Chap. 34A–6.

(9) Groundwater, S. D. Comp. Laws Ann. Chap. 46–6.

(f) The following are South Dakota laws that interfere with the achievement of the purposes and requirements of the Act and are, in accordance with Section 504(g) of the Act, preempted and superseded with respect to surface coal mining, except to the extent that they regulate surface coal mining operations which affect two acres or less, or which otherwise are not regulated by the Surface Mining Control and Reclamation Act.

(1) S. D. Comp. Laws Ann. Chap. 45–6B, except with respect to the criteria for designating lands unsuitable for mining, Section 33(1)–(5).

(2) S. D. Comp. Laws Ann. Chap. 45–6C, except with respect to the requirements to consult with the owner of surface lands to be explored and the right of the owner to establish reasonable restrictions on exploration travel (Section 16), the requirement to post an exploration reclamation bond (Section 19), the prohibition of explosives use in exploration within one-half mile of a flowing water well or a domestic water well without the owner's permission (Section 27), and the requirement to cap, plug, and seal all exploration test holes (Section 28).

(g) The Secretary may grant a limited variance from the performance standards of §§ 941.815 through 941.828 of this Part if the applicant for coal exploration approval or a surface mining permit submitted pursuant to §§ 941.770 through 941.788 of this Part demonstrates in the application that: (1) Such variance is necessary because of the unique nature of South Dakota's terrain, climate, biological, chemical, or other relevent physical conditions; and (2) the proposed alternative will achieve equal or greater environmental protection than does the performance requirement from which the variance is requested.

§ 941.701 General.

Sections 700.5, 700.11, 700.12, 700.13, 700.14, 700.15 and Part 701 of this chapter shall apply to surface coal mining operations in South Dakota.

§ 941.707 Exemption for coal extraction incident to Government-financed highway or other construction.

Part 707 of this chapter, *Exemption for Coal Extraction Incident to Government-Fiananced Highway or Other Construction*, shall apply to surface coal mining and reclamation operations.

§ 941.761 Areas designated unsuitable for surface coal mining by act of Congress.

Part 761 of this chapter, *Areas Designated by Act of Congress*, shall apply to surface coal mining and reclamation operations.

§ 941.762 Criteria for designating areas as unsuitable for surface coal mining operations.

Part 762 of this chapter, *Criteria for Designating Areas Unsuitable for Surface Coal Mining Operations*, shall apply to surface coal mine operations.

§ 941.764 Process for designating areas unsuitable for surface coal mining operations.

Part 764 of this chapter, *State Processes for Designating Areas Unsuitable for Surface Coal Mining Operations*, pertaining to petitioning, initial processing, hearing requirements, decisions, data base and inventory systems, public information, and regulatory responsibilities shall apply to surface coal mine operations beginning one year after the effective date of this program.

§ 941.770 General requirements for permits and exploration procedures.

(a) Part 770 of this chapter, *General Requirements for Permit Systems Under State Programs*, shall apply to surface coal mining and exploration operations.

(b) No person shall conduct coal exploration which results in the removal of more than 250 tons of coal, nor shall any person conduct surface coal mining operations without a permit issued by the Secretary pursuant to 30 CFR Part 770, and permits, leases and certificates required by the State of South Dakota including compliance with: (1) air pollution control, S. D. Comp. Laws Ann. Chap. 34A–1; (2) water pollution control, S. D. Comp. Laws Ann. Chap. 34A–2; (3) and solid waste disposal, S. D. Comp. Laws Ann. Chap. 34A–6.

(c) No person shall be granted a permit to conduct exploration which results in the removal of more than 250 tons of coal or shall conduct surface coal mining unless that person has acquired all required permits, leases, and certificates listed in Paragraph (b) of this section.

§ 941.711 General requirements for permits and permit applications.

(a) Part 771 of this chapter, *General Requirements for Permits and Permit Applications*, shall apply to any person who makes application for a permit to conduct surface coal mine operations.

(b) A person who wishes to conduct new surface coal mining and reclamation operations or who wishes a revision of his permit shall file a complete application at least 12 months prior to the date upon which permit issuance or revision is desired, and shall pay to the Secretary a permit fee in accordance with § 736.25 of this chapter.

§ 941.776 General requirements for coal exploration.

(a) Part 776 of this chapter, *General Requirements for Coal Exploration*, shall apply to any person who conducts or seeks to conduct coal exploration operations.

(b) The Office shall make every effort to act on an exploration application within 60 days of receipt or such longer time as may be reasonable under the circumstances. If additional time is needed, OSM shall notify the applicant that the application is being reviewed, but more time is necessary to complete such review, setting forth the reasons and the additional time that is needed.

§ 941.778 Surface mining permit application—minimum requirements for legal, financial, compliance and related information.

Part 778 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information*, shall apply to any person who makes application for a permit to conduct surface coal mining and reclamation operations.

§ 941.779 Surface mining permit applications—minimum requirements for information on environmental resources.

Part 779 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

§ 941.780 Surface mining permit applications—minimum requirements for reclamation and operation plan.

(a) Part 780 of this chapter, *Surface Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct surface coal mining and reclamation operations.

(b) Each applicant for a permit shall demonstrate compliance with the South Dakota laws on air pollution, S. D. Comp. Laws Ann. Chap. 34A–1, water pollution control, S. D. Comp. Laws Ann. Chap. 34A–2, and solid waste disposal, S. D. Comp. Laws Ann. Chap. 34A–6.

§ 941.782 Underground mining permit applications—minimum requirements for legal, financial, compliance, and related information.

Part 782 of this chapter, *Underground Mining Permit Applications—Minimum requirements for Legal, Financial, Compliance, and Related Information*, shall apply to any person who makes application for a permit to conduct underground mining operations.

§ 941.783 Underground mining permit applications—minimum requirements for information on environmental resources.

Part 783 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Information on Environmental Resources*, shall apply to any person who submits an application to conduct underground mining operations.

§ 941.784 Underground mining permit applications—minimum requirements for reclamation and operation plan.

Part 784 of this chapter, *Underground Mining Permit Applications—Minimum Requirements for Reclamation and Operation Plan*, shall apply to any person who makes application to conduct underground mining.

§ 941.785 Requirements for permits for special categories of mining.

Part 785 of this chapter, *Requirements for Permits for Special Categories of Mining*, shall apply to each person who makes application for a permit to conduct certain categories of surface coal mining and reclamation operations.

§ 941.786 Review, public participation, and approval or disapproval of permit applications and permit terms and conditions.

Part 786 of this chapter, *Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Term and Conditions*, shall apply to the review of applications made by any person for surface coal mining and reclamation operations.

§ 941.787 Administrative and judicial review of decisions on permit applications.

Part 787 of this chapter, Administrative and Judicial Review of Decisions on Permit Applications, shall apply to the review of decisions on permit applications for surface coal mining and reclamation operations.

§ 941.788 Permit reviews, revisions, and renewals, and transfer, sale, and assignment of rights granted under permits.

Part 788 of this chapter, *Permit Reviews, Revisions, and Renewals, and Transfer, Sale, and Assignment of Rights Granted Under Permits*, shall apply to review, revision, and renewal of permits for surface coal mine operations, and to transfer, sale, and assignment of rights granted under permits.

§ 941.795 Small operator assistance.

Part 795 of this chapter, *Small Operator Assistance*, shall apply to any person making application for assistance under the small operator assistance program.

§ 941.800 General requirements for bonding of surface coal mining and reclamation operations.

Part 800 of this chapter, *General Requirements for Bonding of Surface Coal Mining and Reclamation*

Operations Under Regulatory Programs, shall apply to all surface coal mining and reclamation operations.

§ 941.815 Performance standards—coal exploration.

Part 815 of this chapter, *Permanent Program Performance Standards—Coal Exploration*, shall apply to any person conducting coal exploration operations.

§ 941.816 Performance standards—surface mining activities.

Part 816 of this chapter, *Permanent Program Performance Standards—Surface Mining Activities*, shall apply to any person who conducts surface coal mining and reclamation operations.

§ 941.817 Performance standards—underground mining activities.

Part 817 of this chapter, *Permanent Program Performance Standards—Underground Mining Activities*, shall apply to any person who conducts underground mining operations.

§ 941.818 Special performance standards—concurrent surface and underground mining.

Part 818 of this chapter, *Special Permanent Program Performance Standards—Concurrent Surface and Underground Mining*, shall apply to any person who conducts combined surface and underground mining operations.

§ 941.819 Special performance standards—auger mining.

Part 819 of this chapter, *Special Permanent Program Performance Standards—Auger Mining*, shall apply to any person who conducts surface coal mining operations which include auger mining.

§ 941.822 Special performance standards—operations in alluvial valley floors.

Part 822 of this chapter, *Special Permanent Program Performance Standards—Operations in Alluvial Valley Floors*, shall apply to any person who conducts surface coal mining and reclamation operations on alluvial valley floors.

§ 941.823 Special performance standards—operations on prime farmland.

Part 823 of this chapter, *Special Permanent Program Performance Standards—Operations on Prime Farmland*, shall apply to any person who conducts surface coal mining and reclamation operations on prime farmlands.

§ 941.824 Special performance standards—mountaintop removal.

Part 824 of this chapter, *Special Permanent Program Performance Standards—Mountaintop Removal*, shall apply to any person who conducts surface coal mining operations constituting mountaintop removal mining.

§ 941.826 Special performance standards—operations on steep slopes.

Part 826 of this chapter, *Special Permanent Program Performance Standards—Operations on Steep Slopes*, shall apply to any person who conducts surface coal mining and reclamation operations on steep slopes.

§ 941.827 Special performance standards—coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

Part 827 of this chapter, *Special Permanent Program Performance Standards—Coal Processing Plants and Support Facilities Not Located at or Near the Minesite or Not Within the Permit Area for a Mine*, shall apply to any person who conducts surface coal mining and reclamation operations which include the operation of coal processing plants and support facilities not located at or near the minesite or not within the permit area for a mine.

§ 941.828 Special performance standards—in situ processing.

Part 828 of this chapter, *Special Permanent Program Performance Standards—In Situ Processing*, shall apply to any person who conducts in situ processing activities.

§ 941.842 Federal inspections.

(a) Part 842 of this chapter, *Federal Inspections*, shall apply to all exploration and surface coal mining and reclamation operations.

(b) The Office will furnish a copy of any inspection report or enforcement action taken to the South Dakota Department of Water and Natural Resources upon request.

§ 941.843 Federal enforcement.

(a) Part 843 of this chapter, *Federal Enforcement*, shall apply when enforcement action is required for violations on surface coal mining and reclamation operations.

(b) The Office will furnish a copy of each enforcement action and order to show cause issued pursuant to this section to the South Dakota Department of Water and Natural Resources upon request.

§ 941.845 Civil penalties.

Part 845 of this chapter, *Civil Penalties*, shall apply when civil penalties are assessed for violations on surface coal mining and reclamation operations.

[FR Doc. 83-9948 Filed 4-18-83; 8:45 am]
BILLING CODE 4310-05-M

federal register

Tuesday
April 19, 1983

Part III

Department of Agriculture

Food and Nutrition Service

Food Stamp Program; Energy Assistance and Restoration of Lost Benefits

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amendment No. 225]

Food Stamp Program; Energy Assistance and Restoration of Lost Benefits

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This action will amend Food Stamp Program regulations to ensure that the income and resource exclusion for State and local energy assistance is allowed only for legitimate energy assistance programs. This rule will also limit restoration of lost benefits to a one year period, calculated from the point in time that the State agency learns of the household's request for restoration. These changes are required by Pub. L. 97–98, the Food Stamp and Commodity Distribution Amendments of 1981, and are intended to reduce Program costs, waste and abuse. These changes were proposed on September 14, 1982 at 47 FR 40443.

EFFECTIVE DATE: This rule is effective on May 19, 1983; except for § 273.9 which contains information collection requirements which will be submitted for approval to the Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Acting Supervisor, Eligibility and Certification Section, Program Design and Rulemaking Branch, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, VA 22302. Phone (703)756–3429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting or recordkeeping provisions that are included in this final rule will be submitted for approval to the Office of Management and Budget (OMB). They will not be effective until OMB approval has been obtained.

Classification

This final rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified "not major". The final rule will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. This final rule will not affect the business community and will not result in 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. This final rule will to some extent reduce Program costs, waste and abuse by requiring more careful scrutiny of excluded State or local energy assistance.

Regulatory Flexibility Act

This final rule has also been reviewed in relation to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164, September 19, 1980). Robert E. Leard, Acting Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. The final rule will affect State agencies, some State and local legislatures, and a relatively small number of food stamp recipients.

Background

Resource/Income Exclusion for Energy Assistance

On September 14, 1982 the Department published (at 47 FR 40443) a proposed rule on the treatment of energy assistance payments in the Food Stamp Program. The preamble of the proposal discussed several statutory changes enacted between February 1980 and December 1981 as Congress focused and clarified its intent as to how energy assistance payments should be treated in other assistance programs such as food stamps. In our proposal, energy assistance payments received by applicants or participants would have been excluded from consideration as a resource or income or both in determining eligibility or benefit levels. To be excluded the energy assistance must be a bona fide effort by a state or local legislative body to provide energy assistance in addition or regular amounts of public or general assistance, it must be designated as energy assistance by the State or local legislative body authorizing the payments, and it must be calculated as if provided on a seasonal basis for an aggregate of not more than six months.

FNS retained the authority to decide on the legitimacy of such designation, applying the appropriate criteria contained in the law and supporting documentation. For a complete understanding of the several statutory enactments and their implications in this rulemaking it is suggested that the September 14, 1982 proposed rule and preamble be reviewed.

The Department received 29 comments on the proposal. In this preamble we will discuss the areas of greatest concern and any changes in the final rule arising from our analysis of them. We will also address concerns expressed by commenters on parts of the proposal that are unchanged. Comments not related to provisions of the proposal have not been addressed.

Consistently through the legislative history of the enactments just referred to, the intent of Congress was that State and local energy assistance payments would be scrutinized by the Department to establish the legitimacy of purpose of the energy assistance. In the preamble of the proposal we enumerated five factors which were, as we said, "intended simply to provide guidance to State agencies regarding the types of considerations" FNS would take into account in determining the legitimacy of purpose for energy assistance programs. About two-thirds of the energy assistance comments we received reflected some confusion over the so-called purpose test contained in § 273.9(c)(11)(i) and how it would be used in the FNS review of State or local plans. The commenters who objected to one or more of the factors misconstrued these guidelines as a set of rigid criteria against which state and local plans would be evaluated. Because we said the list was not all-inclusive, some commenters were apprehensive that other unstated criteria would also be applied during FNS review. To resolve this issue the regulatory language has been changed. It can reasonably be assumed, however, that if a State or local government plan meets most of the factors, it will probably be approved for exclusion. If it does not, it probably will not be approved. FNS review will be on a case-by-case basis. During the comment analysis for this final rule another indicator was suggested: the actual designation of energy assistance payments as such. Because it appears that this indicator would make the guidelines more helpful to State and local governments, it has been added to the guidelines proposed. In addition, two of the proposed guidelines have been combined. If the energy assistance payments are combined with payments made by another agency, FNS review of excludability could include contact with that agency.

In § 273.9(c)(11)(ii) we identified as a requirement for excludability that "the payments or allowances are clearly identified in State or local law as energy assistance." One commenter argues that

our requirement of a designation in State or local law goes beyond the statute's requirement of designation by "the State or local legislative body." The commenter points out that such a designation may be made in documents or reports accompanying local legislation. We agree; it was not our intention to impose a restriction beyond Congressional intent. However, the statutory wording just cited shows clearly that Congress intended that the energy assistance designation should reflect the intent of the legislative body enacting the energy assistance. State or local intent, it is clear, may be expressed in the formal legislative history. The legitimacy of purpose would not necessarily be attested to by the report of one chamber's subcommittee, or the comments of an individual member which may be found in the formal legislative history of a local enactment. The Department would point out that, for the purposes of ascertaining food stamp excludability, the best way for a state or local legislative body to express its intent in response to this rulemaking would be to make the designation of energy assistance as the purpose of a program in the enabling or appropriations enactment. If the designation is contained only in supporting documentation it must clearly reflect the intent of both chambers of a bicameral legislature or the intent of a majority of members of a town council or county board. Documentation that would show a majority intent of an enacting body could take the form of a legislative resolution, the preamble and body of county regulations, county or town ordinances, or similar measures that represent the wishes of an entire legislative body.

Our proposal sought to prevent the designation of energy assistance applied *ex post facto* during the course of a legislative session following enactment of some other kind of assistance payments which are clearly unrelated to energy assistance in an attempt to make them excludable for food stamps. Regulatory language has been amended accordingly.

One commenter on § 273.9(c)(11)(iii) argued that requiring energy assistance payments to be calculated "based on the seasonal home energy needs of a typical household" could be stringently applied by FNS to deny excludability to programs in which energy assistance payments are calculated on the basis of only *increased* energy needs. Such a strict reading was not our intention. Regulatory language has been added accordingly.

Another comment on the same subsection expressed the opinion that States in parts of the country that do not have seasons should not be prevented from providing energy assistance payments that would be excludable. In this connection the Department must point out that Congress was quite clear that excludability was tied to calculations of needs based on seasonal energy consumption patterns (Pub. L. 97–98, Section 1306, 7 U.S.C. 2014). It would be, in our opinion, exceeding mandatory provisions to extend excludability to energy assistance payments in areas that do not have "seasonal home energy needs."

There were several comments on the energy assistance regulation in general. One State agency expressed the point of view that FNS had no authority to decide the legitimacy of the designation of energy assistance payments. As we pointed out in the preamble of the September 14, 1982 proposed rule, House Report No. 96–788, on page 123, shows clearly that Congress intended that excludability of energy assistance payments depended on the Department's satisfaction with the legitimacy of purpose for any designations of energy assistance.

Two other State agencies thought that the review for FNS approval would be time consuming and delay participants' benefitting from the exclusion. A public interest group commented that FNS should confine its review to a specific timeframe and that approval should be automatic at the end of the time allotted for review. FNS intends to respond to requests for approval of energy assistance program excludability as quickly as possible, with a response deadline of 30 days. However, FNS cannot commit itself to automatic approval of submitted programs if we exceed the 30 day approval deadline.

Some commenters believe that participants that receive energy assistance payments prior to FNS approval of excludability and have those payments counted as income should be entitled to retroactive benefits. The Department, however, finds no statutory authority for retroactive benefits in the amendments this rulemaking addresses. State agencies that are planning to implement an energy assistance program are encouraged to work with FNS during the development phases of the program to avoid problems and delays in the FNS review process. The State agency should implement the income exclusion within 30 days following FNS notification of its approval.

We received a comment from a State agency whose energy assistance payments have been approved for exclusion under current regulations and one from a public interest group based in that State. Both comments requested that the excludability not be subjected to a second review after publication of the final rule. Energy assistance payments currently approved for exclusion will continue to be approved under the final regulation, but, within six months of final rule publication all plans have to be reviewed to ensure that they comply with new mandatory provisions. In many cases FNS will probably not need new information submitted from State or local agencies to approve continued excludability of their energy assistance payments. State agencies now operating such programs should contact FNS as soon as possible to learn of any new requirements applicable to them.

The only other aspect of the energy assistance payment exclusion regulation that received a significant amount of attention in comments was the implementation timeframes and we will address these issues below under the Implementation heading.

Restoration of Lost Benefits

Our September 14, 1982 proposed rule addressed provisions in sections 1320 (a) and (b) of Pub. L. 97–98 which mandated a twelve month limit on restoration of lost benefits. Three State agencies commented in support of the proposed changes. Several commenters pointed out that although the regulation appears to absolutely limit restored benefits to twelve months, there are circumstances in which more than one year's benefits would be restored. For instance, if a currently participating household requests a restoration of benefits for a one year period and it takes the certification office two months to establish the household's entitlement, the household would receive fourteen or fifteen months of benefit restoration. The Department agrees that restoration may be for a longer period if resolution of a request occurs some months after the State agency is made aware of the request.

Two advocacy groups pointed out that our proposal for restoration of lost benefits requests removed the distinction between intentional Program violation (fraud) reversals and all other requests for benefit restoration. (Prior to enactment of Pub. L. 97–98 FNS had limited restoration of lost benefits to twelve months but for intentional Program violation determination reversals there was no time limit.) One

commenter argues that Pub. L. 97-98 only mandates the regulations currently in effect and does not remove the exception to the twelve-month limit for later reversals of wrongful intentional Program violation decisions. Congress did not refer specifically to these reversals in the 1981 Amendments. However, in actual Program operation the twelve-month limitation dates back from the point in time at which the State agency first learns that a household has requested a restoration of lost benefits. In cases where the household contests an intentional Program violation allegation by participation in an administrative disqualification hearing it is logical to expect that it is the household's intention to seek restoration of any benefits they will lose. Thus, in cases of contested assertions of intentional Program violation that are later reversed, the State agency should interpret the household's participation in the administrative disqualification hearing as a notification of the household's request for restoration of lost benefits. Language has been added to the final regulation to make this clear.

Implementation

State or local governments that currently provide energy assistance are required to bring their energy assistance programs into compliance with these new provisions within six months of publication of these rules. If State or local governments fail to meet this deadline, their energy assistance will no longer be excludable. Four State agencies and one FNS Regional Office commented that the six-month implementation timeframe was too short and would create administrative difficulties. However, the six-month deadline, as we pointed out in our proposal, was indicated in the Conference Report on Pub. L. 97-98, and was intended to allow State and local legislatures sufficient time to revise their laws and programs. S. Rpt. No. 97-290, 97th Cong., 1st Sess., p. 217. In view of Congressional intent indicated in the Conference Report, no change is made in the final rule. Following publication of the final rule, State or local energy assistance which is not already being excluded will not be approved for exclusion unless it is established in compliance with the new provisions.

The new provisions concerning restoration of lost benefits shall be implemented no later than 120 days following publication of the final rule.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—Social programs, Reporting and recordkeeping requirements.

21 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—Social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR Parts 272 and 273 are amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. In § 272.1, a new subparagraph (46) is added to paragraph (g) to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(46) *Amendment 225.* The State agency shall obtain FNS approval for the exclusion of energy assistance provided under any State or local program, in accordance with the criteria set forth in §§ 273.8(e)(14) and 273.9(c)(11), within six months of the date of publication of the final rule. State or local energy assistance which is not approved during this six month period shall cease to be excluded at the end of the period. The new provisions concerning restoration of lost benefits in §§ 273.17 (a) and (e) shall be implemented no later than 120 days following publication of the final rule.

* * * * *

2. In § 272.3, paragraph (a)(1)(ix) is amended by removing the citation "§ 273.8(e)(11)(viii) and § 273.9(c)(10(v)", and inserting in lieu thereof the citation "§ 273.8(e)(14) and § 273.9(c)(11)".

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.8, paragraph (e)(11)(viii) is removed, paragraphs (e)(11) (ix) and (x) are redesignated as (e)(11)(viii) and (e)(11)(ix), respectively; and, a new paragraph (e)(14) is added to read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(e) *Exclusions from resources.* * * *

(14) Energy assistance payments or allowances excluded as income under § 273.9(c)(11).

* * * * *

4. In § 273.9 paragraph (c)(10)(v) is removed and paragraphs (c)(10) (vi), (vii), (viii), (ix), and (x) are redesignated as (c)(10) (v), (vi), (vii), (viii), and (ix), respectively; and a new paragraph (c)(11) is added to read as follows:

§ 273.9 Income and deductions.

* * * * *

(c) *Income exclusions.* * * *

(11) Payments or allowances made under any Federal law for the purpose of providing energy assistance. In addition, any payments or allowances, including tax credits, under State or local law which are so designated and made for the purpose of providing energy assistance shall be excluded from consideration as income, provided that FNS has approved the exclusion of such payments or allowances. Notification of FNS approval will contain a specific date on which it becomes effective, but in no case will that date be later than 30 days following FNS notification to the State agency. The payments shall include but not be limited to assistance which is combined in a single payment with public assistance (PA) or general assistance (GA). The State agency shall submit documentation to FNS to show that the State or local energy assistance to be excluded meets the purpose designation as follows:

(i) The State or local payments or allowances are made for the purpose of providing energy assistance to households. Some indicators of purpose are:

(A) The energy assistance is not limited to households which receive PA or GA;

(B) The energy assistance is provided only to households which actually incur home energy costs;

(C) If the energy assistance payments are made separately or combined with other assistance payments, such as PA or GA, the energy assistance results in an increase in total assistance to the household (not counting food stamps) when compared to the assistance level as of the first day of the State or local legislative session during which the energy assistance is authorized or increased;

(D) The energy assistance is based on studies, surveys, or reports evaluating home energy costs. The energy assistance levels should be directly tied to the findings of such studies, surveys, or reports; and

(E) The energy assistance payments are designated as such by the legislative body enacting them;

(ii) The payments or allowances are clearly designated, (A) in State or local law, or (B) in documentation supporting or accompanying the statute, as energy

assistance, distinct from other assistance. If the designation is contained only in supporting documentation it must clearly reflect the intent of both chambers of a bicameral legislature or the intent of a majority of members of a town council or county board. Documentation that would show a majority intent of an enacting body could take the form of a legislative resolution, the preamble and body of county regulations, county or town ordinances, or similar measures that represent the wishes of an entire legislative body; and

(iii)The levels of State or local engergy assistance payments or allowances are calculated based on the seasonal home energy needs of typical households over an aggregate period not exceeding six months per year. If the State or local energy assistance is actually provided over a period longer than this aggregate, then the State agency shall document the reasons why it is administratively infeasible or impracticable to provide the energy assistance within the aggregate period on which it is based. If the legislation enacting the energy assistance program requires calculation of the energy assistance payments on the basis of only *increased* seasonal home energy needs, such payments may be excluded.

* * * * *

5. In § 273.17, paragraph (a)(1) is revised, paragraph (a)(2) is redesignated as (a)(3), a new paragraph (a)(2) is added, and paragraph (e) is revised. The changes read as follows:

§ 273.17 Restoration of lost benefits.

(a) *Entitlement.* (1) The State agency shall restore to households benefits which were lost whenever the loss was caused by an error by the State agency or by an administrative disqualification for intentional Program violation which was subsequently reversed as specified in paragraph (e) of this section, or if there is a statement elsewhere in the regulations specifically stating that the household is entitled to restoration of lost benefits. Benefits shall be restored for not more than twelve months prior to whichever of the following occurred first:

(i) The date the State agency receives a request for restoration from a household; or

(ii) The date the State agency is notified or otherwise discovers that a loss to a household has occurred.

(2) The State agency shall restore to households benefits which were found by any judicial action to have been wrongfully withheld. If the judicial action is the first action the recipient has taken to obtain restoration of lost benefits, then benefits shall be restored for a period of not more than twelve months from the date the court action was initiated. When the judicial action is a review of a State agency action, the benefits shall be restored for a period of not more than twelve months from the first of the following dates:

(i) The date the State agency receives a request for restoration;

(ii) If no request for restoration is received, the date the fair hearing action was initiated; but

(iii) Never more than one year from when the State agency is notified of, or discovers, the loss.

* * * * *

(e) *Lost benefits to individuals disqualified for intentional Program violation.* Individuals disqualified for intentional Program violation are entitled to restoration of any benefits lost during the months that they were disqualified, not to exceed twelve months prior to the date of State agency notification, only if the decision which resulted in disqualification is subsequently reversed. For example, an individual would not be entitled to restoration of lost benefits for the period of disqualification based solely on the fact that a criminal conviction could not be obtained, unless the individual successfully challenged the disqualification period imposed by an administrative disqualification in a separate court action. For each month the individual was disqualified, not to exceed twelve months prior to State agency notification, the amount to be restored, if any, shall be determined by comparing the allotment the household received with the allotment the household would have received had the disqualified member been allowed to participate. If the household received a smaller allotment than it should have received, the difference equals the amount to be restored. Participation in an administrative disqualification hearing in which the household contests the State agency assertion of intentional Program violation shall be considered notification that the household is requesting restored benefits.

* * * * *

Authority: 91 Stat. 958 (7 U.S.C. 2011–2029).

(Catalog of Federal Domestic Assistance Program No. 10.551, Food Stamps)

Dated: April 8, 1983.

Robert E. Leard,

Administrator.

[FR Doc. 83-10068 Filed 4-18-83; 8:45 am]

BILLING CODE 3410-30-M

7 CFR Parts 271 and 285

[Admt. 248]

Food Stamp Program; Termination of the Food Stamp Program in the Commonwealth of Puerto Rico

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final Rule.

SUMMARY: The 1981 Omnibus Budget Reconciliation Act initiates a nutrition assistance grant to replace the Food Stamp Program in the Commonwealth of Puerto Rico effective July 1, 1982. On April 30, 1982, the Department published an interim rule at 47 FR 18567 which implemented those technical and procedural provisions which would govern the termination of the Federal Food Stamp Program in the Commonwealth of Puerto Rico and the transition into the Nutrition Assistance Grant Program. This rulemaking finalizes the provisions of the interim rule.

EFFECTIVE DATE: Interim § 285.11 which is herein redesignated as § 285.10 and revised, and which allows the Commonwealth of Puerto Rico to retain 25 percent of the value of nonfraud claim recoveries that did not result from administrative error was effective April 30, 1982. The requirement to delete reference to Puerto Rico in 7 CFR 273.9 and 273.10 was effective July 1, 1982, also, § 271.2 is effective July 1, 1982. All other provisions in the interim rule adopted by this final action were effective April 30, 1982.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Acting Supervisor, Eligibility and Certification Section, Program Design and Rulemaking Branch, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia 22302; (703) 756–3429.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Department has determined that this rule does not constitute a major rule. This rule implements the technical aspects of the conversion of the Food Stamp Program in the Commonwealth of Puerto Rico to a Nutrition Assistance Grant Program. The provisions of the nutrition assistance grant itself were implemented through a rule published by the Department on March 12, 1982 at 47 FR 10767.

In addition, this rule will not result in a major increase in costs to State (Commonwealth) or local government agencies in Puerto Rico. This rule will also not result in a major increase in costs or prices for consumers or individuals and will not have a significant effect on competition, employment, productivity, investment, or foreign trade. Further, this rule is unrelated to the ability of United States-based enterprises to compete with foreign-based enterprises. Moreover, pursuant to section 4(a) of the E.O. 12291, the Department has determined that the rule is within the authority delegated by law and consistent with Congressional intent.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act, Pub. L. 96-354. Robert E. Leard, Acting Administrator of the Food and Nutrition Service, has certified that this action will have a broad but minor economic impact on a substantial number of small entities. The action will implement those provisions that govern the conversion of the Federal Food Stamp Program in the Commonwealth of Puerto Rico to a nutrition assistance grant program. The State and local welfare agencies are affected to the extent that they administer the current program. The Department has determined that the potential impact on retail food sales will be minimal since the government of the Commonwealth of Puerto Rico has chosen to replace the present Food Stamp Program in the Commonwealth of Puerto Rico with a cash nutrition assistance program.

Information collection requirements contained in this regulation (§ 285.11(c)) have been approved by the Office of Management and Budget under the provision of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 40-R4067.

Background

The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35, 95 Stat. 357, August 13, 1981) provides for the conversion of the Food Stamp Program in the Commonwealth of Puerto Rico to a nutrition assistance grant program effective July 1, 1982. The Department has divided the implementation of the grant legislation and related matters into two sets of rulemakings. The Department published an interim rule on March 12, 1982 at 47 FR 10767 and a final rule on June 29, 1982 at 47 FR 28067 which implemented the provisions of the nutrition assistance grant legislation.

On April 30, 1982, the Department published an interim rule at 47 FR 18567 which established those provisions that, although not mandated by the grant legislation are necessary to ensure a smooth and orderly transition from a Food Stamp Program to a nutrition assistance grant program. This rulemaking finalizes the provisions of that interim rule.

Many provisions of the interim rule concerned Program functions that would have to be terminated by certain dates. These functions were store authorizations, bank redemption deadlines and the like. All of the dates for termination of these functions have now passed and the activities involved have ceased. Thus the provisions of the interim rule that established the termination dates have been deleted in the final rule.

The April 30, 1982, interim rule had a 30-day comment period during which one comment was received. The FNS Southeast Regional Office recommended clarification in the regulatory language regarding the acceptance of food coupons for redemption by banks located outside of the Commonwealth of Puerto Rico. The interim rule states that banks in the Commonwealth of Puerto Rico could accept coupons from authorized retail food stores and wholesale food concerns until August 27, 1982 and that no banks would accept coupons after that date. With the passing of the termination dates just referred to it is no longer necessary to address this issue so no change is needed in regulatory language.

Section 271.2, Definitions, in the paragraph giving the meaning of the word "State", Puerto Rico is mentioned since the Commonwealth was included in the definition for Program purposes. This inclusion is no longer appropriate, so this final rule adds language to delete "Puerto Rico" from the definition of "State".

Except for the changes just addressed those provisions of 7 CFR Parts 271 and 285 that remain unchanged from the interim rule are adopted as set forth in the interim rule. These Parts are set out below for the convenience of the reader. The reader should note that the section entitled "Termination of the Food Stamp Program in the Commonwealth of Puerto Rico" was incorrectly designated in the interim rule as § 285.11. The final rule correctly designates the section as § 285.10.

List of Subjects

7 CFR Part 271

Administrative practice and procedures, Food stamps, Grant programs—social programs.

7 CFR Part 285

Accounting, Food assistance programs, Grant programs—agriculture, Grant programs—social programs, Intergovernmental relations, Puerto Rico, Technical assistance, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the amendments to 7 CFR Parts 271, and 285 are adopted as final as follows:

PART 271—GENERAL INFORMATION AND DEFINITIONS

1. In § 271.1 paragraph (b) the addition of a sentence to the end of the paragraph which appeared as interim final at 47 FR 18567 on April 30, 1982 is adopted as final to read as follows:

§ 271.1 General purpose and scope.

* * * * *

(b) * * * Part 285 describes the general terms and conditions under which grant funds are provided to the Commonwealth of Puerto Rico.

2. In § 271.2, Definitions, the definition of the word "State" is revised to remove the words "Puerto Rico". This paragraph now reads as follows:

§ 271.2 Definitions.

* * * * *

"State" means any one of the fifty States, the District of Columbia, Guam, the Northern Mariana Islands, the Virgin Islands of the United States, and the reservation of an Indian tribe whose ITO meets the requirements of the Food Stamp Act of 1977 for participation as a State agency or as a wholesale food concern.

* * * * *

PART 285—PROVISION OF A NUTRITION ASSISTANCE GRANT FOR THE COMMONWEALTH OF PUERTO RICO

3. Section 285.11 which appeared as interim at 47 FR 18567 on April 30, 1982, is adopted as final, is redesignated as § 285.10, and is revised to read as follows:

§ 285.10 Termination of the Food Stamp Program in the Commonwealth of Puerto Rico.

Retention of funds collected from claims. (a) The Commonwealth of Puerto Rico shall retain the value of funds collected for both fraud and nonfraud claims. This amount includes the total value of allotment reductions to collect fraud claims but does not include the value of the reduction of allotments resulting from a disqualification. The Commonwealth of Puerto Rico's letter of

credit will be amended on a quarterly basis to reflect the Commonwealth of Puerto Rico's retention of 25 percent of the value of those nonfraud claims which did not result from error on the part of the State agency and 50 percent of the value of fraud claims collected, as well as full retention by FNS of all administrative error overissuance recoveries.

(b) The Commonwealth of Puerto Rico shall submit monthly a Form FNS–209, Status of Claims Against Households, to detail its activities relating to claims against households. This report is due no later than 30 days after the end of each calendar month in which the Commonwealth of Puerto Rico undertakes claims-related activities. In addition to reporting the amount of funds recovered from fraud claims each month on Form FNS–209, the Commonwealth of Puerto Rico shall also report these amounts on other letter of credit documents as required. In accounting for fraud claims collections, the Commonwealth of Puerto Rico shall include cash repayments and the value of allotments recovered or offset against restoration of lost benefits. However, the value of allotments reduced during periods of disqualification shall not be considered recovered allotments and shall not be used to offset a fraud claim. In addition, the Commonwealth of Puerto Rico shall establish controls to ensure that officials responsible for fraud determinations will not benefit from the Commonwealth of Puerto Rico's share of recoveries.

(c) In cases where FNS has billed the Commonwealth of Puerto Rico for negligence, any amounts collected from households for which overissuances were caused by the Commonwealth of Puerto Rico's negligence will be credited by FNS. When submitting these payments, Puerto Rico shall include a note in the remarks section of the FNS–209 which shows the amount that should be credited against the Commonwealth of Puerto Rico's bill.

(91 Stat. (7 U.S.C. 2011–2029))

(Catalog of Federal Domestic Assistance Program, No. 10.551, Food Stamps)

Dated: April 7, 1983.

Robert E. Leard,

Administrator.

[FR Doc. 83-10087 Filed 4-18-83; 8:45 am]

BILLING CODE 3410-30-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. 247]

Food Stamp Program; Disclosure of Information and Noncompliance with Other Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rulemaking.

SUMMARY: This rule contains proposed regulations based on provisions of the Food Stamp and Commodity Distribution Amendments of 1981 and the Food Stamp Act Amendments of 1982 relating to the disclosure of information and noncompliance with other programs. The proposal would provide for disclosure of casefile information to the Comptroller General, law enforcement officials, and persons responsible for administering other Federal assistance programs and federally assisted State assistance programs. In addition, this rulemaking would prohibit State agencies from increasing the benefits to households which have decreased income resulting from penalties imposed for intentional failure to comply with the requirements of another means-tested program. These changes would provide those persons responsible for administering or enforcing the requirements of the Food Stamp Program and other means-tested programs additional mechanisms for detecting recipients who have incorrectly reported their household's circumstances and taking appropriate action to ensure program integrity.

DATE: Comments on this proposed rulemaking must be received on or before June 20, 1983 to be assured of consideration.

ADDRESS: Comments should be submitted to Judith M. Seymour, Acting Supervisor, Eligibility and Certification Section, Program Design and Rulemaking Branch, Family Nutrition Programs, Food and Nutrition Service, USDA, Alexandria, Virginia, 22302. All written comments will be open to public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday), at 3101 Park Center Drive, Alexandria, Virginia, Room 708.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposed rulemaking should be directed to Ms. Seymour at the above address or by telephone at (703) 756-3429.

SUPPLEMENTARY INFORMATION:

Classification

This proposed rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1, and has been classified "not major." The proposed rule will not have an annual effect on the economy of $100 million or more, nor is it likely to result in a major increase in costs of prices for consumers, individual industries, Federal, State or local government agencies or geographic regions. Because this proposed rule would not affect the business community, it would not 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.

Regulatory Flexibility Act

The proposed rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), and Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that the proposal would not have a significant impact on a substantial number of small entities. The proposal would implement those provisions of the Food Stamp and Commodity Distribution Amendments of 1981 and the Food Stamp Act Amendments of 1982 relating to the disclosure of information and noncompliance with other programs. State and local welfare agencies will be affected to the extent that they administer the Program. Those most affected will be individuals participating in the Program who are suspected of having provided incorrect information to obtain benefits under another means-tested program or who have experienced decreases in income as result of penalties imposed under other such means-tested programs.

Paperwork Reduction Act

This regulation does not contain reporting and recordkeeping requirements subject to approval by the Office of Management and Budget (OMB).

Background

The Food Stamp and Commodity Distribution Amendments of 1981 (Pub. L. 97-98, enacted on December 22, 1981) contained a provision (Section 1319) which states that State plans of operation shall provide for access to applicant and recipient records by the Comptroller General of the United States for audit and examination purposes, and by local, State of Federal law enforcement officials for the purpose of investigating possible violations of the Food Stamp Act and regulations. This proposed rulemaking would incorporate this provision of the Food Stamp and Commodity Distribution Amendments of 1981 into the federal regulations.

The Food Stamp Act Amendments of 1982 (Pub. L. 97-253, enacted on September 8, 1982) contained a provision (Section 169) stating that State plans of operation shall provide for access to information included in food stamp applications by administrators of other Federal assistance programs and federally assisted State assistance programs. This proposed rule would also incorporate into Federal Regulations this provision of the 1982 Amendments. For purposes of clarity, this proposed rule identifies such programs as means-tested programs.

In addition, the 1982 Amendments contained a provision (Section 164) which prohibits any increase in food stamp benefits to households on which penalties, resulting in decreases in income, have been imposed for *intentional failure to comply* with Federal, State or local welfare laws. This provision of the 1982 Amendments would also be implemented through this proposed rulemaking, thereby ensuring that the Food Stamp program does not mitigate the penalties imposed by other programs in which food stamp recipients also participate.

Disclosure of Information

Current Food Stamp Program regulations limit the use or disclosure of information obtained from applicant households to persons directly connected with the administration or enforcement of the Food Stamp Act or regulations, the Food Distribution Program, other federally aided, means-tested assistance programs such as Aid to Families with Dependent Children (AFDC), Medicaid, Supplemental Security Income (SSI), and General Assistance (GA) programs subject to the joint processing requirements. The regulation also permits the sharing of Food Stamp Program participation lists with the Food Distribution Program.

In implementing the 1982 amendment permitting the disclosure of information to officials administering or enforcing Federal assistance programs or federally assisted State programs, the Department is proposing deletion from the regulation of the reference to specific programs and insertion of the broader statutory language.

Congress included the provision in the Food Stamp and Commodity Distribution Amendments of 1981 which states that the State plans of operation shall provide to the Comptroller General access to Food Stamp Program records containing data on individual program recipients to clarify that it never meant to deny GAO access to such records. (Vol. 127 Cong. Rec. H7612 (daily ed. October 22, 1881) (remarks of Rep. Wampler)). In order to clarify that local, State, and Federal law enforcement officials are considered to be directly connected with the enforcement of the Food Stamp Program when conducting investigations of alleged Program violations, language was included in the 1981 Amendments stating that State plans of operation shall provide for access to applicant information by such officials. The proposed rule would, therefore, add language to the current regulations to clarify the access authority of the Comptroller General and local, State and Federal law enforcement officials. (See 7 CFR 272.1(c)).

Noncompliance with Other Programs

Pursuant to the 1977 Food Stamp Act, as amended, current Food Stamp Program regulations allow for an increase in food stamp benefits whenever a household has its income reduced for any reason. Consequently, when a welfare program penalizes a food stamp recipient household by imposing a reduction in cash benefits for intentional failure to comply with its requirements, food stamp benefits *increase* because the household has less countable income. Congressional action taken in the 1982 Food Stamp Amendments (Section 164) prohibits such an increase.

Legislative history states "Substantial testimony before the Committee has indicated that the food stamp program should reinforce, not mitigate, the penalties imposed by the other programs that food stamp recipients also participate in, and the Committee's amendment would do so". (S. Rep. No. 97-504, 97th Cong. 2nd Sess. 144(1982)). A portion of testimony stated that no household should benefit in one program from receiving benefits fraudulently in another. Further testimony suggested that the money owed because of a fraud situation is really a debt that the recipient owes, and should be treated like any other debt, and therefore the full amount to which the recipient is entitled to before the reduction should be counted as income.

When drafting this proposed rulemaking the Department considered defining "intentional failure to comply". The Department is not proposing to further define intentional failure to comply beyond the language in the statute. Instead, when another program has determined that a recipient action is an intentional failure to comply, the Food Stamp Program will accept that determination. The Department also considered which programs would be identifies as "Federal, State or local welfare programs." The Department considers these programs to be any that are means-tested and in which public funds are used to pay for the benefits. Such programs would include SSI, AFDC, GA, and other means-tested assistance programs under other titles. The Department does not believe that the statutory language contemplates application of this provision to non-means-tested programs, such as Social Security, Railroad Retirement, Veterans' Benefits, etc.

This proposed rule would require that each State agency take appropriate action to ensure that food stamp benefits do not increase as a result of such noncompliance. Even if a recipient's benefit level in another program is reduced to zero as a result of recoupment because of intentional failure to comply with that program's rules, food stamp benefits will not be increased. Following is an example of how to handle such benefit reductions in means-tested programs. If an AFDC recipient has intentionally underreported his or her income, the AFDC benefit is first reduced to reflect the corrected income and then further reduced by the recoupment amount. In this instance, the food stamp calculations would reflect the initial, reduced amount *before* recoupment. The Department believes that each State agency can best decide how to ensure that food stamp benefits do not increase in such situations and, consequently, the proposed rule does not specify the procedures to be followed.

Implementation

State agencies would begin implementing the portions of this rule regarding the disclosure of information and regarding noncompliance with other programs no later than the first day of the month 30 days following publication of the final rule. In the instance of noncompliance, State agencies would take appropriate action as instances arise. There is no requirement that a casefile search should be done upon implementation, but State agencies may take such action if they wish.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, it is proposed that 7 CFR Parts 272 and 273 be amended as follows:

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

1. In § 272.1, paragraph (c)(1) is revised and a new subparagraph (62) added to paragraph (g). The revisions and additions read as follows:

§ 272.1 General terms and conditions.

* * * * *

(c) *Disclosure.* (1) Use or disclosure of information obtained from food stamp applicant households, exclusively for the Food Stamp Program, shall be restricted to the following persons:

(i) Persons directly connected with the administration or enforcement of the provisions of the Food Stamp Act or regulations, other Federal assistance programs, or federally assisted State programs which provide assistance, on a means-tested basis, to low income individuals;

(ii) Employees of the Comptroller General's Office of the United States for audit and examination authorized by any other provision of law; and

(iii) Local, State or Federal law enforcement officials, upon their request, for the purpose of investigating an alleged violation of the Food Stamp Act or regulations.

* * * * *

(g) *Implementation.* * * *

(62) *Amendment 247.* State agencies would implement the provisions relative to disclosure of information and noncompliance with other programs no later than the first day of the month 30 days following publication.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

2. In § 273.10, a new subparagraph (vi) is added to paragraph (e)(2) to read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(e) *Calculating net income and benefit levels—(1) Net Monthly Income.* * * *

(2) *Eligibility and benefits:* * * *

(vi) For households whose income has been reduced aa a result of noncompliance with other program requirements, income calculation shall take into account specific procedures in § 273.11(j).

* * * * *

3. In § 273.11, a new paragraph (j) would be added to read as follows:

§ 273.11 Action on households with special circumstances.

* * * * *

(j) *Households with a decrease in income due to failure to comply.* The State agency shall ensure that there is no increase in food stamp benefits to households on which a penalty resulting in a decrease in income has been imposed for intentional failure to comply with a Federal, State, or local welfare program which is means-tested and distributes publicly funded benefits. The procedures for determining food stamp benefits when there is such a decrease in income are as follows:

(1) When a recipient's benefits under a Federal, State, or local means-tested program (such as but not limited to SSI, AFDC, GA) are decreased due to intentional noncompliance, the State agency shall identify that portion of the decrease which is a penalty for intentional noncompliance.

(2) The State agency shall calculate the food stamp benefits using the benefit amount which would be issued by that program if no penalty had been deducted from the recipient's income.

(91 Stat. 958 (7 U.S.C. 2011–2029))

(Catalog of Federal Domestic Assistance Programs No. 10.551, Food Stamps)

Dated: April 11, 1983.

John H. Stokes, III,

Acting Administrator.

[FR Doc. 83-10068 Filed 4-18-83; 8:45 am]

BILLING CODE 3410-30-M

federal register

Tuesday
April 19, 1983

Part IV

Department of the Interior

Fish and Wildlife Service

Geological and Geophysical Exploration of the Coastal Plain, Arctic National Wildlife Refuge, Alaska; Final Rule

Record of Decision for Oil and Gas Exploration Within the Coastal Plain of the Arctic National Wildlife Refuge, Alaska; Rule-Related Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 37

Geological and Geophysical Exploration of the Coastal Plain, Arctic National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rulemaking establishes guidelines governing the carrying out of exploratory activities on the coastal plain of the Arctic National Wildlife Refuge. The promulgation of guidelines by regulation is required by subsection 1002(d)(1) of the Alaska National Interest Lands Conservation Act (ANILCA). These guidelines are based on the results of the continuing baseline study required by subsection 1002(c) and other information available to the Department of the Interior. They prescribe how to obtain approval to conduct exploratory activities and limitations on the ways in which such activities may be conducted. The purpose of such exploration is to obtain data and information about the oil and gas production potential of the coastal plain, which will be used in preparing a report to Congress. The report will contain, among other things, a recommendation on the desirability of further oil and gas exploration, development, and production in the area and an evaluation of their adverse effects on the refuge's fish and wildlife, their habitats, and other resources.

EFFECTIVE DATE: April 19, 1983.

ADDRESS: Those wishing to comment may mail their comments to: Robert A. Jantzen, Director, U.S. Fish and Wildlife Service, Attention: Associate Director for Wildlife Resources, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. James Gillett, Chief, Division of Refuge Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, (202) 343–4311.

SUPPLEMENTARY INFORMATION: These regulations were prepared by a Task Force headed by David McGillivary, Ecological Services, Region 7, U.S. Fish and Wildlife Service and Wilma Zellhoefer, Fish and Wildlife Biologist, Arctic National Wildlife Refuge, U.S. Fish and Wildlife Service.

Proposed rulemaking was published at 47 **Federal Register** 41060–41074 on September 16, 1982, and comments were invited for 45 days through November 1, 1982. Over 500 written comments were received from 71 sources including individuals, industry, conservation groups, academia, and Federal, State, and local government agencies, and Members of Congress. The U.S. Fish and Wildlife Service (Service) conducted two public hearings in Alaska to receive comments on the proposed regulations and accompanying draft Environmental Impact Statement (EIS). At these hearings, 13 people provided formal testimony on October 7, 1982 in Anchorage and 16 people provided formal testimony on October 12, 1982 in Kaktovik, where several others also participated in a general discussion.

The Service appreciates the interest shown in these guidelines. In very broad terms, commenters expressed two divergent points of view. Some thought that the guidelines are unnecessarily burdensome or restrictive, and some thought that they do not provide an adequate level of protection for refuge resources and values.

The following discussion summarizes the comments, suggestions and actions taken and presents itself in a section-by-section analysis of the final guidelines.

§ 37.1 Purpose. Amongst the few commentors specifically commenting on this section, there was a difference of opinion on whether the proposed rule correctly stated the purpose of the § 1002 program. While one commenter said that it accurately reflected congressional intent, another suggested that the § 1002 program is intended to have the dual goals of data collection and resource protection and that the proposed § 37.1 incorrectly subordinated the objective of avoiding significant harm to the objective of obtaining the best possible data. The Service disagrees with the latter view. Section 1002's purpose is to facilitate the controlled collection of data and information to be used by the Executive and Legislative Branches in deciding whether further exploration through stratigraphic test wells, development, and production of oil and gas within the coastal plain should be permitted, and if so whether any additional legal authorities are necessary to minimize or avoid adverse effects therefrom on the refuge's resources. While the guidelines fix ascertainment of the best possible data and information concerning oil and gas within the coastal plain as the goal of the § 1002 program in order to foster sound decisionmaking, implementation of this goal is not without constraint. The "no significant adverse effect" standard of § 1002(d)(1) is a limitation on the manner in which data collection activities may be authorized and carried out, which would not be necessary in the absence of data collection. The goal of conserving the refuge's resources is instead reflected in § 303(2) of ANILCA, 94 Stat. 2389 and 2390, 16 U.S.C. 668dd note, redesignating the refuge as a unit of the National Wildlife Refuge System (NWRS), and § 304(a) of ANILCA, 94 Stat. 2393, affirming application, except to the extent limited by ANILCA, of the laws governing administration of the NWRS to it. Nonetheless, without changing its intent, the Service has adopted this commenter's suggestion for changing and combining the third and fourth sentences of § 37.1 because the suggested language is simpler. Section 37.1 now states that the goal of the § 1002 program is to ascertain the best possible data and information without significantly adversely affecting the wildlife, its habitat, or the environment and without unnecessary duplication of exploratory activities. A few commenters criticized the rule as flawed for failing to state that the purpose of these guidelines is to provide maximum protection for the coastal plain's resources. This issue is discussed in the summary of comments on § 37.11.

Relying on § 1002(a) which says that the purpose of § 1002 is to "authorize" exploratory activity within the coastal plain, a few commenters criticized the second sentence of § 27.1 which says that § 1002 mandates an oil and gas exploration program. This statement is based on § 1002(d)(1) which directs the Secretary of the Interior to establish a regulatory framework for governing exploratory activities that are carried out on the coastal plain and § 1002(e)(2) which requires the Secretary to approve all exploration plans found to be consistent with the regulations. The Service realizes that no one, including the United States Geological Survey (GS), is required to submit an exploration plan and that it is possible that no exploration will be carried out.

A few commenters construed these guidelines as establishing a pre-leasing program. The Service disagrees with this construction. By their nature, the guidelines must focus on exploration, but § 37.4 is a disclaimer to the notion that authorization to conduct exploration confers in any manner a right to any discovered oil or gas, which includes any preferential leasing right.

Section 37.2 Definitions. Sixteen commenters made various comments on several of the definitions included in the proposed rule. Their remarks, plus the Service's changes in § 37.2, are summarized below.

Section 37.2(a) "Act." This definition was modified to reflect the amendment of section 1002 which was enacted on December 30, 1982 by section 110 of Pub.

L. 97–394, 96 Stat. 1982. This amendment added the following proviso to section 1002(e)(2)(C):

> And *Provided*, That the Secretary shall prohibit by regulation any person who obtains access to such data and information from the Secretary or from any person other than a permittee from participation in any lease sale which includes the areas from which the information was obtained and from any commercial use of the information. The Secretary shall require that any permittee shall make available such data to any person at fair cost.

The Service plans to implement this proviso on an interim basis through the adoption of §§ 37.4(b), 37.22(d)(3), 37.53(g) and 37.54(d). These interim final rules have been adopted without the benefit of public review and comment. They have been adopted to avoid the hiatus that would otherwise occur if the disqualifications against participation in future lease sales, the prohibition against commercial use of data and information obtained from the Secretary, and the requirement that permittees make raw data and information available to any person at fair cost, which are required to be implemented by regulation, were not implemented at the time these guidelines go into effect. The Service does, however, invite any person who is interested in commenting on §§ 37.4(b), 37.22(d)(3), 37.53(g) and 37.54(d) to submit written comments to Robert A. Jantzen, Director, U.S. Fish and Wildlife Service, Attention: Associate Director for Wildlife Resources, Department of the Interior, Washington, D.C. 20240 by June 3, 1983. Commenters may also offer their own suggestions for implementing section 110 of Pub. L. 97–394, as well as any amendments to the remainder of 50 CFR Part 37 that they feel are needed because of section 110.

Section 37.2(b) "Adequate protective cover." The definition of adequate protective cover drew several comments. Most commenters recommended that a specific physical standard be established for the minimum depths of snow and frost which would be considered adequate cover. The Service disagrees with this approach. Adequate protective cover is a concept which varies according to the substrate to be protected and the method of access used. For example, a rubber-tired Rolligon would have relatively less effect than a six-unit cat-train when travelling over tussock tundra with six inches of snow cover. Conversely, a D–9 Caterpillar tractor may cause no disturbance when travelling over a frozen mudflat with no snow cover, while potentially causing significant disturbance to an area of high microrelief cover by an average of six inches of snow. Because of the great variety in topography in the coastal plain, and the large number of different vehicles which may be used in the exploration program, the Service believes that a performance-based standard is a more effective safeguard than an operational standard and is, therefore, retaining the definition proposed.

The application of this standard will require to some degree the exercise of personal judgment, as two commenters noted. However, the permittee's compliance with this standard will be enforced by professionally trained and experienced Field Monitors who will be exercising their professional judgment as to whether the standard is being met under specific field conditions.

Section 37.2(e) Cultural resource. One commenter felt that this definition was too narrow and should be broadened to include contemporary Native culture. The Service disagrees. This provision is consonant with §§ 106 and 110 of the National Historic Preservation Act (NHPA), as amended, 16 U.S.C. 470f and 470h–2, its implementing regulations, 36 CFR Parts 60 and 800, and Executive Order 11593, 36 FR 8921 (May 13, 1971), 16 U.S.C. 470 note, concerning the protection of historic and cultural properties. This definition encompasses sites, structures, and objects significant in American history, including Native history and pre-history, but it properly does not cover resources of strictly contemporary Native cultural value, such as some recent sacred sites and cemeteries. Such contemporary cultural values are covered under other authorities and procedures, *e.g.*, the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, the American Indian Religious Freedom Act, 42 U.S.C. 1996, and Title VIII of ANILCA, 16 U.S.C. 3112–3126, concerning subsistence. For more information, see also the discussions of §§ 37.22 and 37.32 below.

Section 37.2(i) "Exploratory activities." One commenter criticized the proposed definition for encompassing all geophysical activities.

Although the Service recognizes that its regulatory definition is broader than the definition found in Section 1002(b)(2), which defines "exploratory activity" to mean surface geological exploration or seismic exploration, or both, for oil and gas within the coastal plain, it believes that the rule is not inconsistent with the statute. As suggested in the preamble to the proposed regulations, the Service wishes to enable a permittee to design an integrated exploration plan using phased exploratory methods, whereby reconnaissance-level data obtained by geophysical exploration methods other than seismic exploration, such as aerogravimetric and aeromagnetic surveys, can be used, should a permittee wish to do so, to help focus its attention on those areas where detailed seismic exploration may be warranted. In order to be approved, a permittee's exploration plan must be found to be consistent with the Service's guidelines. Therefore, so that an exploration plan involving geophysical survey methods other than seismic exploration could be approved, the Service has adopted a definition of exploratory activities which covers other geophysical exploration methods, in addition to seismic exploration. If, instead, the Service adopted *verbatim* the statutory definition, it and the interested applicants could run the risk that the omission from its guidelines of other geophysical methods could be construed to preclude their authorization and use.

Two commenters criticized the proposed rule for encompassing aerial exploration. As noted in the EIS, surface geological survey parties are often transported by helicopter. The possibilities of conducting seismic exploration by use of a helicopter-transported conventional survey technique (subsurface explosives) or of a helicopter-transported air-shot operation (surface explosives) are also discussed in the EIS. The proposed rule was drafted to include aerial exploration because of the use of helicopters in carrying out these exploratory activities and conventional aerogravimetric surveys. However, these types of activities typically involve surface landings in the area being explored, as do conventional aerogravimetric surveys.

The final rule has been modified to clarify the Service's intent. It covers surface geological exploration, by which the Service means to include even those geological survey parties that are transported from place to place within the coastal plain by helicopters or fixed-wing aircraft; seismic exploration, by which the Service means to include seismic surveys conducted by use of helicopters or fixed-wing aircraft, as well as by other means; and any other type of geophysical exploration of the coastal plain which involves or is a component of an exploration program for the coastal plain which involves surface use of refuge lands. By this definition the Service does not intend to regulate fully airborne surveys, *i.e.*, surveys which are conducted by traversing the navigable airspace and without the benefit of any surface use of

refuge lands, that are separate and not a part of any exploration plan involving surface use of refuge lands, even though their purpose is to gather data about the oil and gas potential of the coastal plain.

Section 37.2(j) "Harass." Four commenters recommended rewriting this rule so as to broaden it to include such terms as "pursue", "hunt", "drive", etc. In an effort to bring this rule into closer conformity with other federal law and to clarify its intent, the Service has rewritten the rule. One commenter felt that the rule is overly broad in that omissions are included. The Service disagrees.

Section 37.2(k) "Hazardous substances." The single commenter addressing this definition asserted that the rule is too broad. It was recommended that the definition be made more specific and more consistent with existing law. As the commenter noted, there are many existing federal statutes and regulations which control the items mentioned in the definition. However, those laws are intended to regulate certain classes of materials, while this rule is intended to regulate the use of a broad spectrum of materials in a localized area. Accordingly, the Service believes the definition is useful. Minor changes have been made in the definition by deleting the reference to shot wire and transferring it to the "waste" definition § 37.2(z) and by inserting "significant" after the word "cause."

Section 37.2(n) "Plan of operation." One commenter complained that no reason was articulated as to why operation plans must be limited to 12 months duration. A number of changes in the rules on operation plans have been made, which are discussed below. They are limited in duration because they are intended to correlate generally with the permittee's field seasons.

Section 37.2(o) "Processed, analyzed and interpreted data or information." Three commenters recommended that the proposed rule be modified by the addition of a sentence describing the term "processing" as including analog to digital conversion, selective filtration, 'weathering', differential modification or amplification, and signal summing or stacking. This recommendation was made to ensure that seismic field tapes would be treated as processed data rather than raw data and information, and, therefore, would be exempt from public disclosure for a number of years in accordance with § 37.54. One of these commenters added that all geophysical data, which the permittee develops only after a considerable financial investment and by virtue of its technical expertise, should be considered as processed data and, therefore, not subject to immediate public release. Another commenter recommended that the rule be modified to include any processing accomplished by programmed, second-stage electronic equipment installed in the field recording equipment. One commenter recommended that the rule be rewritten to cover any data and information collected under a permit and subsequently changed so as to facilitate interpretation.

The Service has not made any changes in the rule based on these comments because of the intervening amendment of Section 1002(e)(2)(C) by Section 110 of Pub. L. 97–394, quoted above. The Service considers the commenter's concerns about the harm that could be done to the competitive positions of permittees should their seismic tapes be made available to the public and their competitors as raw data and the consequent disincentive that the Service's disclosure provisions provided to participation in the exploration program to have been mooted by the passage of Section 110. Section 110 should restore the economic incentive needed by industry to participate in exploration of the coastal plain. According to its legislative history, the purpose of Section 110 is to put all commercial interests on an equal footing by denying any company that gets data and information from the Department or from any party other than a permittee from participating in a subsequent lease sale of the land to which such data and information pertain. H.R. Rep. No. 978, 97th Cong., 2d Sess. 27 (Dec. 17, 1982).

Section 37.2(p) "Raw data and information." One commenter recommended that this rule be reworded so that seismic field tapes would not be included as original recordings in electronic form obtained during field operations. Another commenter stated that the differentiation made in the proposed rules between raw and processed, analyzed and interpreted data was too artificial to justify the difference in their availability and recommended that the definition of raw data be more limited. A few commenters recommended that raw data be defined as all data except processed, analyzed or interpreted data. These changes have not been made for the reason stated above and because of Section 110, according to the legislative history, is also to preserve the right of public access to raw data and information for the purpose of full public discussion and debate on whether the refuge should be opened to leasing in the future. H.R. Rep. No. 97–978, above, at 28. One commenter stated that the raw data should include seismic record sections and therefore wanted § 37.53(d) modified to cover interpretations of seismic record sections. The Service does not agree since seismic record sections are created from the processing of seismic tapes.

Section 37.2(bb) "Year." One commenter stated that there is no reason to tie the definition of year to the government's fiscal year rather than the calendar year. The need for this definition has been eliminated by referring to the fiscal year in § 37.24. By requiring permittees to submit their plans of operation on a fiscal-year basis, § 37.24 enables them to avoid the necessity of submitting two plans of operation for each winter field season. Whenever used elsewhere in the regulations, the term "year" means calendar year.

Section 37.3 Other applicable laws. One commenter suggested that the phrase "the requirements of which are not inconsistent with this part" be deleted from § 37.3(a) on the basis that a federal regulation cannot overrule a federal statute. The commenter misconstrued the rule. This phrase is only intended to apply to state and local laws. The words "and local" have been added to § 37.3(a).

One commenter characterized the proposed §§ 37.3(b) and (c) as passive and charged the Service with the duty of acting to resolve permit conflicts among federal, state, and local governments. Since permittees, not the Service, conduct exploratory activities, it is appropriate that permittees obtain any additional authorizations that may be needed.

But, also in an effort to assist applicants in avoiding conflicts, the preamble to the proposed regulations encouraged any applicant submitting an exploration plan covering activities which would affect land and water uses in Alaska's coastal zone to consult with the State of Alaska's Division of Policy Development and Planning early in its planning effort so that in the submission of its exploration plan to the Service the applicant can satisfy the certification requirement of § 307(c)(3)(A) of the Coastal Zone Management Act, 86 Stat. 1285, as amended, 16 U.S.C. 1456(c)(3)(A), to the extent that it applies to the applicant's proposed activities. The North Slope Borough (NSB), in commenting on the proposed guidelines, requested the Service to point out the importance of similar consultation with it. The NSB was not mentioned in the preamble to the proposed guidelines because its coastal zone management program was not then

in effect. It has informed the Service that it expects its coastal management program to be completed in 1983. Therefore, applicants are also encouraged to consult with the NSB if their planned activities would affect land and water uses in the coastal zone covered by the NSB's management program.

Two commenters stated that § 37.3(c) should refer to the need to obtain the concurrence of native allotment holders for use of their lands. By virtue of the Act of May 17, 1906, 34 Stat. 197, as amended, and Section 1 of the Act of March 8, 1922, 42 Stat. 415, as amended, 43 U.S.C. 270–11, native allotments were made subject to a reservation to the United States of the oil and gas contained therein and of the right to prospect therefor. Because of this reservation, the Service has decided not to adopt this suggestion for the holders of approved Native allotments. The Service has added, instead, a new § 37.23(b), requiring the Regional Director to consult with the approved native allotment holder for the purpose of developing mitigating permit conditions before issuing a special use permit for exploration involving the use of its lands. In addition, § 37.32(e) provides an added measure of protection by authorizing the Regional Director to designate allotted lands, as well as Kaktovik Inupiat Corporation lands, as special areas in which exploratory activities may be restricted.

As to the Kaktovik Inupiat Corporation's lands, the proposed § 37.3(c) is intended only to apply to those lands which are within the coastal plain. By virtue of the map referred to in section 1002(b)(1), lands in which the surface estate has already been conveyed to the Kaktovik Inupiat Corporation pursuant to sections 12 and 14 of the Alaska Native Claims Settlement Act (ANCSA), 85 Stat. 701 and 702, as amended, 43 U.S.C. 1611 and 1613, are excluded from the coastal plain and, therefore, a permit issued pursuant to § 1002 cannot authorize exploration of those lands. As those lands are within the exterior boundaries of the refuge, they continue, by virtue of section 22(g) of ANCSA, 85 Stat. 713, 43 U.S.C. 1621(g), to be subject to other applicable refuge laws and regulations notwithstanding section 103(c) of ANILCA, 94 Stat. 2377, 16 U.S.C. 3103(c), 126 Cong. Rec. H11113 (daily ed. November 21, 1980). Anyone wishing to explore for oil and gas within this excluded area, which was not intended to be covered by the proposed § 37.3(c), should file a separate application for doing so at the time of filing to explore the section 1002 area.

There are six sections of selected Corporation lands within the coastal plain. Because under ANSCA the Corporation can acquire only the surface estate and because the section 1002 program involves exploration of the subsurface estate of a congressionally defined area, which is presently owned by the United States, the Service has decided not to adopt, as a matter of policy, the requirement for obtaining the Corporation's concurrence in the final rule. Therefore, § 37.3(c) has been eliminated. But, the Corporation is covered by §§ 37.23(b) and 37.32(e), which are discussed above.

Section 37.4 Disclaimer and Disqualification. The heading of this section was changed to reflect the addition of § 37.4(b), which implements the first two prohibitions required by § 110 of Pub. L. 97–394. Public comments are invited on § 37.4(b). See the discussion under § 37.2(a) above.

Section 37.11 General standards for exploratory activities. Paragraph 37.11(a) prohibits the conduct of exploratory activities without a special use permit. Although concurring with the use of a special use permit as the final authorizing instrument, one commenter recommended that approval of an exploration plan, rather than issuance of a permit, be the vehicle for the imposition of operational stipulations. This recommendation was based on the absence in the guidelines of a separate, structured opportunity for public review and comment on the terms and conditions of a permit.

The Service views the exploration plan as the applicant's proposal for conducting exploratory activities in a manner consistent with the guidelines. In the process of approving an exploration plan, the Regional Director may require, as a condition of approval, modifications in the plan, such as exploration in assigned areas, joint exploration, or other changes, which will have the effect of limiting operations. However, the Service regards the permit as an additional safeguard necessary to impose detailed or site-specific stipulations. As more information and new situations arise, § 37.31(a) authorizes the Service to impose additional stipulations. These provisions are necessary to enable the Service to supervise adequately exploratory activities. The Service feels that the opportunity afforded the public to review and comment on the exploration plan will be sufficient for the public to identify those aspects of an applicant's proposed operations of concern to the public and to recommend the manner by which they should be controlled or disallowed. Accordingly, no change in the guidelines has been made on the basis of this recommendation.

As was explained in the preamble to the proposed guidelines, the general standards governing the conduct of exploratory activities are stated in § 37.11 and amplified by the environmental protection provisions of Subpart D. The prohibition in § 37.11(d) against the drilling of exploratory wells is not intended to prevent drilling operations necessary for placing explosive charges, where authorized pursuant to an approved exploration plan and special use permit, for seismic exploration.

A number of commenters criticized the Service for reiterating in § 37.11(b)(1) the standard found in section 1002(d)(1) that exploratory activities shall be conducted so that they "do not significantly adversely affect" the refuge's fish and wildlife, their habitats or the environment. They deemed the guidelines as a whole to be deficient in satisfying the level of protection that they construed Congress to intend by this standard.

This criticism has essentially two aspects. One, some commenters felt that the guidelines apply the wrong standard or misapply the statutory standard so as to provide an inadequate degree of protection against the environmental impacts of exploration. Two, a few commenters felt that "significant adverse effect" should be explicitly defined because the standard is otherwise too vague and discretionary.

Those commenters who felt that the guidelines incorrectly apply the "no significant adverse effect" standard argued that Congress intended to authorize the Service to permit only those exploratory methods and techniques that would result in the least damage or assure the maximum protection of the refuge's resources. Their views were summarized by one commenter who suggested that the statutory standard encompasses both a technology-based standard of least damaging technology and a performance-based standard of maximum resource protection. As a corollary, these commenters often thought that the Service should impose a specific exploratory method and/or technique on permittees, usually either by prohibiting access to the coastal plain by surface vehicles (i.e., by cat trains) or by requiring or giving preference to seismic surveys to be conducted by helicopter during the

winter. Expressing the contrary view, an oil company stated that to choose between helicopter-transported seismic surveys and seismic work done by ground vehicle on the basis of apparent environmental compatibility addresses only half of the Service's responsibility and may not produce adequate data quality to evaluate the coastal plain's oil and gas potential. Noting its own experience and record using the heliportable technique in the Kenai Moose Range and the vibration technique on the North Slope, it asserted that seismic exploration can be done with minimum damage to the wildlife and its habitat. For these reasons, it requested the Service to give operators the option of selecting the most appropriate technique.

The Service believes that the meaning of section 1002 must, in the first instance, be sought in the language in which it is itself framed and that the words of Congress, as expressed in section 1002, are themselves the most reliable source from which to ascertain legislative intent. Subsection 1002(a) states that it is the purpose of the statute to authorize exploratory activity within the coastal plain in a manner that "avoids significant adverse effects" on the fish and wildlife and other resources. Subsection 1002(d)(1) states that the guidelines shall include such prohibitions, restrictions, and conditions on carrying out exploratory activities as the Secretary deems necessary or appropriate to ensure that exploratory activities "do not significantly adversely affect" the fish and wildlife, their habitats, or the environment. Subsection 1002(f) states that, whenever the Secretary determines that continuation of further activities will "significantly adversely affect" fish or wildlife, their habitat, or the environment, he may suspend them.

Thus, it is clear from the plain language of Section 1002 that the protection standard adopted by Congress is based on the impact to the resource and not on the technology to be used in carrying out exploration. Furthermore, the statute does not prohibit all adverse impacts or require the least possible amount of adverse impact. Instead, the statute only precludes the Service from authorizing permittees from conducting those exploratory activities that would result in adverse environmental impacts of such consequence as to be significant. Had the congress intended otherwise, it could have easily deleted the word "significantly" or used the phrase "maximum protection", "best available technology", or "least damaging technology" as the standard of protection to be afforded to the refuge's resources. Examination of other environmental legislation demonstrates that when Congress intends to mandate any kind of technology standard, a technology-based standard of least damaging technology, or a performance-based standard of maximum resource protection, it is fully capable of drafting the express statutory language needed to do so. Compare Section 1002 of ANILCA with the Clean Air Act, as amended, 42 U.S.C. 7411(a)(1)(C), 7475(a)(4), and 7503(2), the National Emission Standards Act, 42 U.S.C. 7521(a)(3)(A)(iii), and the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1311(b)(1)(A)(i) and (2)(A)(i) and 1316(a)(1). But as Congress did not use such or similar language in writing Section 1002, the Service believes that its guidelines correctly reflect the standard and level of environmental protection congressionally intended.

Not only does the Service's interpretation give separate meaning each to "significantly" and "adversely", it also makes sense in light of the other provisions of Section 1002. It is clear from Section 1002(e) that Congress intended the needed oil and gas data and information to be obtained with the aid of the private sector. Two Members of Congress noted in their comments on the proposed guidelines that "Congress has recognized that the private sector has historically done a better job of collecting geophysical and seismic data compared to any governmental agency—the private sector is simply better equipped to do the work and, thus, the data is more useful." Also, by labeling the Service's regulations as "guidelines" in Section 1002(d)(1), Congress itself has suggested that they should leave some discretion as to which particular exploratory methods and techniques are to be permitted, as long as they do not cause significant adverse effects.

For these reasons and because the baseline study and EIS required by Section 1002(c) and (d)(2) do not demonstrate the need to eliminate all surface access or to restrict seismic exploration to helicopter-transported seismic surveys conducted during the winter in order to protect the refuge's resources from significant adverse effects, the Service chooses not to adopt such limitations. this decision is also based on the Service's doubt about the technical feasibility and data-gathering efficacy of either suggested approach. One commenter urged the Service to stress the need for quality exploration programs which will give the highest level of environmental protection. As was stated in the preamble to the draft guidelines, the Service encourages applicants to design plans that will maximize resource protection consistenty with the data gathering objective stated in § 37.1.

As noted above, a few commenters wanted "significant adverse effect" to be defined. One commenter asserted that the failure to do so constitutes an abdication of administrative responsibility and leaves the final determination of avoidance of significant harm to the permittee. The Service disagrees with these comments. The guidelines do contain prohibitions, restrictions, and conditions, such as, for example, those dealing with the operation of ground vehicles, the use of explosives, the harassment of wildlife, and the disposal of waste, which are in the Service's judgment necessary and appropriate to prevent significant adverse effects or to mitigate the significance of adverse effects. The Service feels that to go beyond these limitations by expressly defining "significant adverse effect" in both infeasible and undesirable. Within the framework of present knowledge, it is not possible to define what could constitute a "significant adverse effect" for every aspect of the coastal plain's ecosystem that requires protection. Past experience has also shown that a blanket rule is sometimes counterproductive to environmental protection, as well as developmental interests.

The Service's approach reflects the proper mix of rule and discretion so as to permit administrative discretion to be, where feasible, fairly predictable and yet to be tailored to the unique facts and circumstances of concrete situations as they arise. The absence of a statutory definition for the phrase "significantly adversely affect" suggests a similar congressional recognition of the wisdom of and necessity for implementing this standard through the application of professional judgment to the facts of each case. This realism in no way means that the Service is yielding its supervisory responsibilities to its permittees.

Subparagraph 37.11(b)(2) provides that a permittee's exploratory activities shall not be unnecessarily duplicative or unnecessarily duplicate the exploratory activities of another permittee. Several commenters criticized the guidelines' lack of a definition for "unnecessary duplication." Avoidance of unnecessary duplication is not an independent goal of the section 1002 program, but rather one aspect of the requirement to avoid

significant adverse effects on the fish and wildlife, their habitats and the environment. At least one commenter failed to recognize that section 1002(d)(1)(D) proscribes only unnecessary duplication, as distinguished from necessary duplication or replication. This distinction is underscored by § 37.11(c), which allows the Regional Director to permit reexamination of an area if he deems it necessary to correct data deficiencies or to refine or improve data or information already gathered. One commenter expressed concern about the Regional Director's qualification to make such a judgment. In technical and operational matters such as this, the Regional Director plans to obtain the technical advice and recommendations of GS and/or the Bureau of Land Management (BLM), as well as that of the Fish and Wildlife Service, pursuant to a tripartite agreement to be worked out between these agencies.

Two commenters mentioned the need to conduct field experimentation because the effectiveness of different seismic methods and techniques varies from area to area. The Service feels that §§ 37.11(c) and 37.21(d)(6) accommodate this need.

One commenter urged the Service to insist on a group exploration plan that allows for a one-time-only survey over the minimum land surface necessary to provide the desired data. Preferring to see the kind and number of exploration plans submitted for approval, the Service chooses not to require by regulation group participation or to limit exploration of any area to a single survey. However, § 37.13 authorizes the Regional Director to require group participation and § 37.22(a) authorizes him to assign areas or require joint exploration in order to avoid unnecessary duplication. Two industry representatives, noting the expense of conducting seismic exploration in remote areas like the refuge, stated that it is unlikely that any company or group of companies would squander financial resources on data gathering activities that serve no useful purpose. The State of Alaska suggested that for this reason the actual difficulty in dealing with unnecessary duplication is not likely to be great. The Service, too, expects no more than a few exploration plans to be submitted for approval. Consequently, the Service agrees with the State's suggestion to deal with this issue not on a theoretical level, but on the practical level during plan evaluation. Therefore, the Service has not adopted by regulation any of the various suggestions made on what does and does not constitute unnecessary duplication.

Three commenters asked whether the Regional Director will use data that are now or become available to him to eliminate portions of the coastal plain from unnecessary duplication. This question presumes that all geological and geophysical data are of like or equal value in assessing the oil and gas potential of the coastal plain. As explained in the EIS, the value of such data differs considerably according to the exploration method used. The data obtained in the past have already been used to delineate that area of the refuge most prospective for oil and gas and, therefore, worthy of further study through seismic exploration. Accordingly, the Regional Director will not use existing geological and geophysical data to reduce further the area within the coastal plain available for exploration. The guidelines do not require a permittee to use any specific data to restrict the scope of its activities. Rather, § 37.21(d)(6) puts the burden on an applicant to design an integrated exploration plan which avoids unnecessary duplication in its exploratory activities.

Two commenters suggested that due to the confidentiality of seismic work, one permittee will have difficulty anticipating whether its activities will unnecessarily duplicate or unreasonably interfere with another permittee's activities. This concern seems overstated as exploration plans will be public documents. In addition, by virtue of § 37.22(a), the Regional Director shares the burden of applying the standards in § 37.11(b) to his decisionmaking, and, by virtue of §§ 37.31(a), 37.43, and 37.44, he has the power to remedy their abuse.

Section 37.12 Responsibilities of permittee. Two comments criticized the directive in § 37.12(a) that the permittee shall comply with all reasonable stipulations, demands and orders issued by the Regional Director. They felt that inclusion of the modifier "reasonable" would weaken compliance during field operations. One comment stated that this directive confused the need for orders to be reasonable with the time and forum for challenging their reasonableness (i.e., the appellate process). The Service does not expect this result because failure to comply with the Regional Director's order can lead to a costly suspension or even a costlier revocation of a permit. Given that reasonableness is a requirement of administrative law, the Service sees no harm in reiterating its intention to be reasonable, while at the same time satisfying its statutory duties. Language has been added to § 37.12(a) to clarify a permittee's accountability for the compliance of its employees, officials, contractors, subcontractors and agents.

Paragraph 37.12(b) has been modified to require the information concerning the identities of the permittee's general and field representatives and their alternates and the procedures for contacting them, which was to be included in the permittee's exploration plan under the proposed § 37.21(d)(2), to be submitted at the same time the permittee's first plan of operation is submitted. This change was made because the Service realizes that a permittee may not know who its field representative will be at the time its exploration plan is submitted.

Paragraph 37.12(c) allows field operations to be conducted by a permittee's designee, provided the designee is approved by the Regional Director. One company objected to this approval requirement on the grounds that selection of a designee ought to be the prerogative of the company risking its investment and that it is unnecessary since such designation does not relieve the permittee of its permit obligations. The Service disagrees with this comment. The government has a valid interest in a designee's capacity to perform the authorized field activities and its history for responsible compliance with permit terms. This same commenter was unclear as to whether a designee could be an individual or a company. While it could be either, in most instances it will probably be a company; it is the entity responsible to the permittee for carrying out its field operations.

Two commenters suggested that a provision be added to § 37.12(c) to avoid undue delay in acting on a permittee's designation of a designee. One commenter suggested a period of 10 working days and the other suggested no more than 30 days. The Service has adopted the latter suggestion. A new sentence has been added to § 37.12(c) to require the Regional Director to act within 30 days following the receipt of such information from the permittee and designee as he may require to approve or disapprove the designation. On its own initiative, the Service also increased the notice required in § 37.12(c) to 10 working days.

Paragraph 37.12(d) has been clarified by the addition of language indicating that the Service wants to be informed of persons who actually participate as group participants to an exploration plan or who otherwise share in the resulting data and information. This

information has become particularly important to the Department in light of section 110 of Pub. L. 97-394.

One commenter suggested insertion of "reasonable" between "all" and "precautions" in § 37.12(e). This suggestion has been adopted.

Section 37.13 Group participation. Although a number of commenters supported the concept of group participation, they felt that rules dealing with the structure of and process for establishing such a business arrangement were unnecessarily detailed and restrictive. Several commenters shared the view that common business practices within the geophysical exploration industry are sufficient to ensure broad sponsorship and participation. Section 37.13 has been modified on the basis of these comments. The Simplification of this rule should also satisfy the criticism that the requirements of the proposed § 37.13 worked against group cooperation. To be consistent with this change, the requirement in the proposed § 37.21(d)(13) for a description of provisions facilitating group participation in an exploration plan has been deleted. One commenter recommended placing a high priority on group participation as a means of minimizing adverse environmental impacts. This can be done without a change in the rule whenever the Regional Director considers group participation appropriate to avoid unnecessary duplication.

Section 37.14 Bonding. Whereas three commenters felt that a minimum bond of $100,000 would be insufficient, two others felt that $100,000 should be the maximum amount of the bond. One commenter felt the bond should be increased to $500,000, and another $1,000,000. One commenter thought that a variable amount between these two figures should be required, depending on the area covered and the technique used. The Service has added language in § 37.14(a) to allow for increasing the amount of any bond or requiring a new bond or security if additional coverage is needed to secure performance or as a consequence of default. One commenter wanted the rule explicity to allow self-insurance. The Service feels that self-insurance would not provide the same degree of protection for governmental interests. No changes have been made in the rule on the basis of this comment. The Service has, however, added language to § 37.14(a) requiring the bond to be furnished by a qualified surety company approved by the Department of Treasury and to be maintained until the Regional Director notifies the permittee that its period of liability is ended because it has satisfied all of its obligations or because the Regional Director otherwise consents to the bond's cancellation or termination.

In addition, the rule has been changed to require the bond or other security to be furnished to the Service between the time an applicant's exploration plan is approved and its special use permit is issued. Accordingly, § 37.23(a) has been modified to clarify that permit issuance is conditioned upon compliance with § 37.14(a).

Section 37.21 Application requirements. One commenter suggested that § 37.21(a) be reworded to strongly encourage applicants to engage in pre-submission consultation. Although the Service agrees with this concept, no rule change is deemed warranted.

A few commenters urged the Service to expedite approval of exploration plans so that seismic work could commence in February, 1983. The delay in implementation caused by litigation over the section 1002 program and the legal requirements for establishment of these guidelines and public review of exploration plans made this goal impossible. The Service has, however, made several changes to streamline sections 37.21–37.24 in response to comments that the proposed application process was too time consuming and that plan of operation should be eliminated or subject to public review. These changes include shifting proposed requirements for a plan of operation to an exploration plan and eliminating sections 37.21(e)(1)–37.21(e)(7). Subparagraph 37.21(d)(4), previously section 37.21(d)(5), has been changed to require a map, rather than a statement, of the geographic areas in which exploratory activities are proposed and the approximate locations of the applicant's proposed geophysical survey lines (previously proposed in section 37.21(e)(6)), travel routes to and within the refuge, fuel caches, and major support facilities (previously in section 37.21(e)(4)). Subparagraph 37.21(e)(3) has been inserted as section 37.21(d)(7), with the word "detailed" omitted before "schedule" and the word "approximate" added before "dates". Methods of access which were previously required to be described in the proposed section 37.21(d)(5), are now required to be in section 37.21(d)(9), together with the applicant's proposed equipment, support facilities and personnel. By "description" in section 37.21(d)(9), the Service means to be included the approximate number, type, and size of each of the various kinds of equipment and support facilities and the numbers and duties associated with each of the kinds of personnel positions proposed to be used by the applicant to carry out exploratory activities, in addition to any other information which the applicant wishes to furnish to aid the review of its plan. The verbs "use" and "store" have been added to section 37.21(d)(10). Since hazardous substances are defined in section 37.2(k) to include explosives, this change is to clarify that the description of the storage and use of explosives previously proposed in section 37.21(e)(5) is not subsumed in section 37.21(d)(10). Additional changes made to streamline the application process and permit issuance are explained elsewhere below.

The Service took the initiative to remove from section 37.21(b) the last sentence regarding exploration plan approval and to restate the Regional Director's obligation regarding the approval of qualifying exploration plans affirmatively in section 37.22(a), where it is more appropriately addressed.

Two commenters sought clarification as to whether section 37.21(b) means that applications (*i.e.*, exploration plans) can only be filed on the dates specified. Yes, this is the intent of section 37.21(b). Its purposes are to ensure that the public review period runs concurrently on all exploration plans covering the period and submitted on the dates specified in section 37.21(b), and to facilitate comparison of plans in the application of these guidelines. If an applicant wishes to hand deliver its exploration plan or plans to the Regional Director's office in order to ensure timely submission, that is its choice.

In designing these guidelines, the Service has also sought by using filing dates to balance the need for an integrated and planned program of exploration and the possible foreclosure of additional beneficial geophysical evaluation. Therefore, only two opportunities have been provided for applying by interested applicants. The date of the second opportunity for submitting and exploration plan or plans has been changed from March 1, 1983 to March 1, 1984. In addition, section 37.21(b) has been changed so that plans submitted on the first filing date may cover the entire exploration program, from its inception through May 31, 1986, or such portions thereof as the applicant may choose. As originally proposed, an applicant's initial plan could only have covered up to September 30, 1983. This would have required all permittees interested in a multi-year program to submit additional applications. This requirement has been eliminated.

Nonetheless, section 37.21(b) still allows an applicant to submit separate exploration plans on both dates, if it wishes to use the data and information recovered during its initial exploration plan to design better its subsequent exploration plan. Paragraph 37.21(c) merely requires the applicant to state in its initial plan how the activities under its subsequent plan will be integrated with those first undertaken. A permittee having an approved exploration plan which runs beyond October 1, 1984 may, if it wishes, use the second filing date to submit a new exploration plan, which, if approved, would supersede its original plan. If the new plan were not approved, the original plan would continue in effect for the period specified in it unless otherwise modified, revised, suspended, revoked, or relinquished in accordance with these regulations. An applicant need not have filed on the first filing date in order to file on the second. However, any exploration plan filed on the second filing date will be evaluated against exploration plans already authorized and continuing in force. Consequently, it may run a greater risk that its cumulative effects will cross the threshold of significant adverse effects and unnecessary duplication, and, thereby, result in its disapproval. One commenter recommended that a sentence be added to the end of section 37.21(b) stating that exploration plans employing the best possible techniques for ensuring maximum environmental protection will be given preference for a given area. For the reasons explained elsewhere in this preamble, this recommendation was not followed.

The Service has amended section 37.21(b) in an effort to assure that preliminary field investigations and surface geological exploration may commence during the summer of 1983. The amendment would allow the Regional Director to expedite approval of a portion of an exploration plan submitted on the first application date, which portion would encompass only preliminary field investigations and surface geological exploration to be commenced prior to August 1, 1983. This procedure is necessary because the tentative schedule for completing approvals of exploration plans submitted on the first application date would be too late for a permittee to conduct a summer program. The Service believes it to be in the public interest to assure that preliminary investigations are permitted prior to the first winter season of seismic activities. The information gained could then be used by the permittee to refine its subsequent exploratory activities. It would also allow for archeological investigations to be conducted by the permittee prior to commencing seismic exploration. It is intended that the expedited approval would be a one-time-only occurrence, and would only pertain to the relatively benign surface geological exploration and preliminary field investigations, not seismic exploration. That part of the review process involving publication of and public hearings on the exploration plans would not be changed; the preliminary portion would be evaluated by both the public and the Regional Director in the context of the entire plan.

Several commenters found the information requirements set out in section 37.21(d) to be excessive or unnecessary. The Service has adopted the suggestion to delete stockholder information from section 37.21(d)(1).

One commenter suggested that section 37.21(d)(2), proposed as section 37.21(d)(3), be clarified so that it does not cover crew members. Because the commenter correctly construed the rule, the Service does not feel that any textual change is needed. It is intended to cover the participants to a voluntary "group shoot".

Although two commenters objected to the requirement in section 37.21(d)(3), proposed as section 37.21(d)(4), for information on the applicant's background, two others endorsed the propriety of the Service's concern over an applicant's environmental record and ability to carry out its exploration plan. As noted earlier, the Service has a valid interest in an applicant's qualifications and proven experience and will not, therefore, change this rule. Doubts about the Service's competence to assess an applicant's technical proficiency should be assuaged by the Service's plan to use an interdisciplinary team, consisting of representatives from the Service, BLM and GS, to evaluate exploration plans and advise the Regional Director.

On commenter said that the proposed section 37.21(d)(6), now section 37.21(d)(5), should be broadened to require an applicant to describe its strategy for applying non-seismic geophysical techniques, prior to implementation of seismic operations. Another commenter said that the regulation should require the integration of aeromagnetic data into planning seismic line designation. By these guidelines, the Service does not seek to impose any particular scenario on applicants, but section 37.21(d)(6), formerly section 37.27(d)(7), does require an applicant to show how the exploratory methods and techniques it wishes to use will be coordinated in an integrated fashion. Nor should section 37.21(d)(6) be construed to require an applicant to include more than one exploration method or technique in its exploration plan should it only wish to use one.

A few commenters objected that, because an applicant cannot be expected to know prior to submission whether its proposal will unnecessarily duplicate another's activities, it would not be possible to describe how it would avoid doing so in its exploration plan. Accepting this as a valid objection, the Service has eliminated this requirement from section 37.21(d)(6), formerly section 37.21(d)(7). One commenter suggested that the words "to ensure maximum environmental protection and" be inserted after "integrated fashion" in section 37.21(d)(6). This has not been done for the reasons discussed in the summary of comments on section 37.11.

One commenter recommended that § 37.21(d)(12) also require an applicant to submit a schedule for implementing its monitoring procedures. This change has not been made because the Service expects such procedures to be ongoing and contemporaneous with implementation of the exploration plan.

Two commenters stated that it would also be impossible to make a statement on data quality and type prior to the commencement of data recovery. On the other hand, another commenter, while noting the impossibility of making a definitive statement on data quality before data collection and processing, found it reasonable for the Service to expect the applicant's standards of data utility and quality assurance and control program to be described. Finding these comments to be valid, the Service has modified § 37.21(d)(14), formerly § 37.21(d)(15) to require an applicant to describe its data quality assurance and control program rather than the type and quality of data that it expects to collect. To a limited extent, the later information can be ascertained by the reviewer by knowing the exploratory methods and techniques that the applicant intends to employ, which are required to be identified in its exploration plan by § 37.21(d)(5), formerly § 37.21(d)(6).

One commenter objected to § 37.21(d)(15), formerly § 37.21(d)(16), on the ground that requirements for an exploration plan should be spelled out before a survey begins and not as it progresses. The Service agrees with this comment. Paragraph 37.21(d)(15) is intended to permit the Regional Director to identify additional information, the need for which becomes apparent during pre-submission consultation.

Two commenters suggested that, in the description of an exploration plan, it

should be stated that items susceptible of being discarded will be marked as to their owner as a way of discouraging their discard in the coastal plain. The Service feels that this addition is not necessary. Shot wire, included in the definition of waste in § 37.2(z), will be cleaned up pursuant to § 37.31(e)(2). Fuel drums must be marked according to § 37.31(e)(5) and disposed of as waste in a manner acceptable to the Regional Director according to § 37.31(e)(2). The Service intends to use its monitoring program to enforce these provisions so that it does not expect any shot wire or fuel drums to be discarded within the coastal plain.

Lastly, the Service adopted the suggestion of one commenter to shorten the period in the proposed § 37.21(e) for submission of the plan of operation from 90 days to 45 days prior to commencement of field operations. As part of its effort to simplify its permit issuance process, the requirement for a plan of operation to accompany initially the submission of an exploration plan has been eliminated, and the remainder of § 37.21(e), as modified, has been shifted to § 37.24. Thus, approval of a plan of operation has been removed as a step in the permit issuance process. This change is consistent with eliminating annual permits and shifting some of the information that was proposed to be in a plan of operation to an exploration plan. These changes also clarify the original purpose of the plan of operation, *i.e.*, to serve as an informational document to facilitate the Service's planning.

Section 37.22 Approval of exploration plan. Questioning the Regional Director's expertise in making decisions on when, where, and how exploratory activities should be conducted, five commenters expressed opposition to the Regional Director's authority to assign areas for exploration or require joint exploration. The Service feels that giving the Regional Director the authority to assign areas for exploration is desirable for assuring proper coverage of the coastal plain and adequate data recovery, and that giving him the authority to require joint exploration is desirable for preventing unnecessary duplication of exploratory activities and, thereby, protecting the coastal plain from significant adverse environmental effects. Having this authority does not necessarily mean, however, that the Regional Director will find it necessary to exercise it. Moreover, as suggested earlier, the Regional Director plans to seek the technical advice of GS and BLM, as well as that of the Service, in reviewing and approving exploration plans. In addition to questioning its wisdom, one commenter questioned the legality of giving the Regional Director the authority to assign areas or require joint participation. This authority is based on section 1002(d)(1) of ANILCA, which states,

> [T]he guidelines shall include such prohibitions, restrictions, and conditions on the carrying out of exploratory activities as the Secretary deems necessary or appropriate to ensure that exploratory activities do not significantly adversely affect the fish and wildlife, their habitats, or the environment, including, but not limited to—* * * (D) requirements that exploratory activities be coordinated in such a manner as to avoid unnecessary duplication.

Obviously, the Service recognizes that it cannot force an applicant to carry out an exploration plan which has been approved under certain conditions, if such conditions are unacceptable to the applicant. In the event that an applicant does not wish to participate in exploration of the coastal plain under the conditions of its approved plan, the applicant need only notify the Regional Director that it is withdrawing.

One commenter suggested that an independent panel, comprised of private citizens interested in and knowledgeable about the refuge and having as their primary concern the protection of its environment, be established to review exploration plans and monitor exploratory activities. In view of the statutory and regulatory provisions providing for public review and comment on exploration plans, a citizens' advisory panel is not considered necessary.

Two commenters criticized § 37.22(a) for giving the Regional Director unfettered discretion in assigning areas or requiring joint exploration. They failed to note that the Regional Director's discretion in exercising this authority is limited by the prefatory language "[i]n order to meet the objective and limitations stated in § 37.1, enforce the standards stated in § 37.11(b), or minimize adverse impacts on subsistence uses." One commenter stated that the last sentence of § 37.22(a) establishes totally unnecessary pre-conditions for plan approval and should be deleted. For the reason stated earlier in the discussion of comments on § 37.21(d)(3), the Service disagrees with this comment.

Accordingly, no changes were made in § 37.22(a) on the basis of these comments. However, to be consistent with the change in § 37.21(d)(1), the reference in § 37.22(a) to shareholders of more than 5% interest has been deleted. In addition, the reference to December 3, 1982 has been deleted as that date has now passed.

As part of its efforts to streamline its entire permitting process, the Service has shortened the period stated in § 37.22(b) for reviewing an exploration plan to no more than 90 days, unless the Regional Director extends it for up to another 30 days by notifying the applicant of the extension in writing. This is responsive to comments suggesting that the statutory 120-day period is unnecessarily long. The Service expects that 90 days will be an adequate amount of time in which to publish the exploration plans, hold public hearings, consider public comments and evaluate the plans. If the Service can complete this process in a shorter period, it will do so. But, if it finds that more time is needed, § 37.22(b) has been written to allow it to use up to the full statutory period.

One commenter, who found the procedures leading to the issuance of a special use permit to be lengthy and cumbersome, stated that there should be no need for a public hearing for every exploration plan submitted. Perhaps the commenter does not know that the statute requires a hearing. The Service does not intend, however, to hold a separate hearing for each plan submitted, but rather to hold a combined hearing for all plans submitted on the same filing date. Four commenters requested the public hearing on the exploration plan to be held in Kaktovik. At the present time, the Service contemplates holding such hearings in Anchorage and Kaktovik. One commenter requested the texts of exploration plans to be sent to the city of Kaktovik. The Service foresees no problems in accommodating this suggestion. The commenter also wanted the rules to stipulate that information covered by §§ 37.13 and 37.14 be provided to the city. This change is not necessary as the city's access to this information is covered by the last sentence of § 37.54(a). A few commenters stated that plans of operation should be made available for public review, as well as exploration plans. In light of the changes that have been made in §§ 37.21–37.24, public hearings on plans of operation are not considered necessary, nor would they be likely to be productive.

After considering the criticism, discussed earlier, of § 37.21(d)(15), the Service has added language to § 37.22(b) recognizing that the Regional Director may need to confer with an applicant during plan evaluation. This need may arise, for example, because of questions generated by public comments on the

applicant's plan, because of modifications to the plan being contemplated by the Service, or because of a request received under § 37.21(c) for an expedited review and approval of part of the applicant's exploration plan.

One commenter recommended that § 37.22(b) provide explicitly for the review of proposed exploration plans by state and federal agencies and indicate how the Regional Director will accommodate their comments. The Service plans to solicit and consider the views of other interested agencies, along with other public comments, but it feels that the guidelines, which are to govern how exploratory activities are to be carried out, need not address such internal administrative procedures.

Although one commenter endorsed vesting final decisional authority in the Service's Director, four commenters urged the appeals process outlined in § 37.22(c) to make use of the Interior Board of Land Appeals. Three of these commenters suggested alternatively that provision should be made for appeals to the Secretary. By its own rules, the Board's appellate jurisdiction does not extend to the review of the Regional Director's decisions. 43 CFR 4.410. These final regulations have been modified, however, by the addition of a sentence in § 37.22(c) permitting the Assistant Secretary for Fish and Wildlife and Parks or the Secretary to take jurisdiction at any stage of such an appeal, to review the decisions of the Regional Director and the Director, and to direct them to reconsider their decisions.

One commenter suggested that the Regional Director's decision on an exploration plan should be upheld unless it is determined on appeal to have been clearly erroneous. The "clearly erroneous" rule is the standard for appellate review of a trial court's findings of fact set forth in Rule 52(a) of the Federal Rules of Civil Procedure. This suggestion has not been adopted because it fails to account for the differences between judicial and administrative decisionmaking.

Four commenters suggested that § 37.22(c) be amended to permit non-applicants to appeal the Regional Director's decisions on exploration plans. One commenter also stated members of the public and local governments should have the right to intervene in an appeal filed by an applicant. The Service has not adopted these suggestions because it believes that the interests of other individuals, organizations, and agencies can be adequately vindicated by their participation in the public hearing assured by § 37.22(b). Judicial review remains the basic remedy against illegal administrative action. A non-applicant aggrieved by the Regional Director's decision may challenge its legality in court. One of these commenters also urged the Director to publish a notice of appeal and his decision. Although neither of these steps are contemplated, it should be relatively easy, given the standardized filing dates and specified time frames for subsequent actions, for interested persons to ascertain from the Service whether appeals of the Regional Director's decisions have been filed. In addition, the Director's decision on appeal, which must be in writing, will be available to the public under the Freedom of Information Act.

One commenter stated that the appeal process outlined in § 37.22(c) should extend to suspensions, which are covered in § 37.43. The penultimate sentence of § 37.43 says that "[r]econsideration of the Regional Director's actions under this section may be obtained by employing the procedures described in § 37.22(c)." The Service construes this language as applying to suspension of activities under an exploration plan and/or permit. To appeal a suspension, the application of the procedures in § 37.22(c) would require the permittee to (1) state fully the basis for its disagreement with suspension, (2) provide a statement or documentation in support of its position, and (3) indicate whether or not it requests an informal hearing before the Director.

One commenter recommended that the "no significant effects" standard of section 1002 be used under § 37.22(e) to trigger the Regional Director's compliance with the procedural requirements stated in Section 810(a)(1)–(3) of ANILCA, 16 U.S.C. 3120(a)(1)–(3). This recommendation was not followed because it confuses subsistence uses with subsistence resources and the requirements of Sections 810 and 1002. The commenter's objection to the rule was apparently based on two considerations. One, the commenter was concerned that the information required to be included in exploration plans would be too general to permit a determination of the significance of the restrictions on subsistence uses that could result from approving an exploration plan. The Service disagrees with this assessment, particularly in view of the changes that have been made in § 37.21(d). Two, the commenter felt that reliance on the § 810 threshold in § 37.22(e) weakens the application of Section 1002. The commenter misconstrues the rule; its purpose is to ensure that section 810 is followed in the course of evaluating an exploration plan. If the Regional Director determines that the exploration plan, if approved, would significantly restrict subsistence uses, the rule enables him to combine the public hearing required by section 810(a)(2) with the public hearing required on the exploration plan.

Protection of subsistence uses was also a major concern raised at the public hearings in Kaktovik and Anchorage. Under § 37.22(a) the Regional Director may modify an exploration plan and under § 37.23 he may structure a special use permit to minimize adverse impacts on subsistence uses.

One commenter asked for assurance that, if public hearings are held for the purpose of considering potential impacts of exploration plans on subsistence use, one of those hearings be held in Kaktovik. The Service intends to do so.

One commenter was concerned that access for the purpose of subsistence use not be restricted. The Service is guided not only by section 810, discussed above, but also by section 811(a) of ANILCA, 16 U.S.C. 3121(a), which requires that reasonable access to subsistence resources be assured.

Section 37.23 Special use permit. Five commenters, critical of the delay in obtaining authorization to commence exploratory activities, recommended that a special use permit be issued concurrently with the approval of an exploration plan. Although the Service has not adopted this recommendation, it has reduced the maximum period allowed following plan approval from 60 days to 45 days.

Among its efforts to streamline the permitting process, the Service has deleted references to the plan of operation contained in the proposed § 37.23 which, if adopted, would have had the effect of requiring a plan of operation to be approved before a special use permit could be issued. In addition, the Service has removed language from the proposed §§ 37.2(w) and 37.23 that, if adopted, would have limited the term of a special use permit to one year. Upon reflection, the Service judged such a limitation to be unwarranted, burdensome, and likely to introduce artificial uncertainty into a permittee's planning. The term of a special use permit will run concurrently with the term of the approved exploration plan or portion thereof covered by the permit.

Language has been added to § 37.23(a) to enable the Regional Director to issue a special use permit to authorize preliminary field investigations and/or surface geological exploration to be conducted during the summer of 1983 should he receive a request for

expedited review and approval of an exploration plan incorporating such activities pursuant to § 37.21(c). Should he approve that part of the plan covering such activities, § 37.23(a) would enable him to issue a permit to authorize the activities covered by that part of the plan. An additional permit would then be issued for any remainder of the plan that may be subsequently approved.

Paragraph 37.23(a) has been modified to clarify that a permit may be amended from time to time as the Regional Director deems necessary and appropriate to carry out section 1002 of ANILCA and these regulations. One commenter criticized the use of permit stipulations to define the nature and extent of authorized operations, arguing that such restrictions should be imposed through approval of the exploration plan. The Service disagrees with this criticism. To the extent that environmental restrictions and safeguards are set forth in the guidelines, the Service expects that an applicant will design its exploratory activities and its exploration plan in a way that it feels will be likely to win approval of its plan on the basis of its consistency with such restrictions and safeguards. To the extent that the need for particular environmental restrictions cannot be foreseen or should not uniformly be applied through rules of general application, the special use permit, which can be amended as the need arises, is a more efficient tool for assuring protection of the coastal plain.

Paragraph 37.23(b) has been added to require the Regional Director to seek to consult with holders of approved native allotments and the Kaktovik Inupiat Corporation before issuing permits authorizing exploratory activities that would affect the surface use of their lands. This paragraph is also discussed in the summary of comments on § 37.3 above.

Section 37.24 Plan of operation. This rule has been rewritten so that approval of a plan of operation is no longer a requirement and so that the function of a plan of operation as an aid to the Service's monitoring program is clarified. The plan of operation will continue to inform the Service in detail on how the permittee intends to carry out its approved exploration plan during that fiscal year. For this reason, § 37.24 permits the Regional Director to require the permittee to make such modification in its plan of operation as he deems necessary and appropriate to ensure its consistency with the permittee's approved exploration plan, and §§ 37.12, 37.14, 37.31, and 37.41–37.44 permit the Service to sanction a permittee for its failure to comply with its plan of operation. Consistent with these changes, the deadline for furnishing the Regional Director with a plan of operation has been changed from 90 to 30 days before field operations are to be commenced for the year, or portion thereof, that it covers, or 10 days before operations are to be commenced in the case of preliminary field investigations or surface geological exploration to be done during the summer of 1983. As the deadline for submitting a plan of operation is not tied to permit issuance, a permittee's first plan of operation may have to be filed before its permit is received. Therefore, prospective permittees should be alert to this deadline.

Section 37.25 Revision. Twenty-five commenters recommended that this rule be amended so that a public hearing is required every time an exploration plan is changed. Two commenters endorsed the flexibility allowed under the rule to make changes consistent with the guidelines, and one commenter agreed that publication and hearings should not be required for minor revisions. The Service feels that both data recovery and resource protection will be better served if permittees are permitted to make minor changes in their exploration plans without being encumbered by the delay that would necessarily result if a public hearing were required before any change, no matter how insignificant, could be implemented. Therefore the recommendation has not been adopted.

Two commenters objected to language in the proposed rule suggesting that revisions might be automatically approved. The objectionable language has been deleted. The final rule says that no revision of an exploration plan shall be implemented unless the Regional Director gives his permission for the revision. But, it also states that a permittee's requested revision shall be deemed to be granted on the 10th working day following its receipt unless the Regional Director takes one of the actions outlined in § 37.25(a). Thus, the rule puts the burden on the Regional Director to act, but it gives him sufficient escape clauses should he not be able to act within the 10-day period or not wish to grant the request.

One commenter noted that what is now § 37.25(a) was internally inconsistent, as proposed, in that the proposed rule stated that a major revision of an exploration plan would have to be subjected to publication and a public hearing before it could be acted upon and that approval of any revision would be subject to the conditions stated in § 37.22(b) and § 37.22(c) to the extent applicable. The reference to § 37.22(b) and § 37.22(c) was erroneous; it has been changed to § 37.22(d).

One commenter suggested that some discretion be given to the Regional Director's Field Monitors to approve revisions. No change in this rule is necessary because by the definition of Regional Director given in § 37.2(r), which includes his authorized representative, a Field Monitor can approve a revision which is consistent with these guidelines upon a delegation of that authority to him by the Regional Director.

Consistent with the changes in §§ 37.21–37.24 previously discussed, a new § 37.25(b) has been added to deal specifically with revisions of plans of operation. The final rule permits a revision to a plan of operation to be implemented following notice, provided that the revision is consistent with the exploration plan to which the plan of operation pertains and with these guidelines. The final rule also permits the Regional Director to require the permittee to defer, modify or rescind its revision when necessary and appropriate to ensure such consistency.

Section 37.31 Environmental protection. Two commenters suggested that the opening statement be reworded to state that operations are to be conducted in a manner which provides the highest degree of environmental protection. This has not been done for the reasons stated above.

One commenter objected to this rule, stating that the special use permit should contain all stipulations attendant to the proposed scope of work. The Service disagrees. It needs the flexibility afforded by this rule to adjust to new and changing operating conditions and to benefit from actual field experience.

One commenter stated that under § 37.31(a) the Regional Director should have both the right and the obligation to perform the permittee's duties should the permittee fail to do so. The Service disagrees with this comment. The provision to which the comment is addressed is intended to give the Service an additional discretionary remedy should a permittee not carry out its obligations. However, because the totality of a permittee's obligations under its exploration plan, special use permit, plan of operation, etc., may be greater than actions which the Service may regard as necessary to protect human health and safety and refuge resources and values, the Service should be free to decide when to invoke this remedy.

One commenter criticized § 37.31(a) for not containing any cost control

measures to protect private industry and suggested the rule be modified to notify the permittee of the Department's estimated cost prior to action or to limit recovery to "reasonable expense". The final rule does not adopt either suggestion. A permittee can avoid being billed for costs which it fears may be unreasonable by performing the required action upon demand. In addition, a permittee can use § 37.46(h) to dispute any costs charged to it which it feels were not actually incurred. These provisions provide sufficient safeguards to the permittee. Moreover, as § 37.31(a) will most likely be invoked in emergencies, it would be unreasonable to require an advance notice of estimated departmental costs.

Section 37.31(b) Terrestrial environment. One commenter recommended that § 37.31(b)(1) be rewritten to specify that vehicles shall be operated in a manner such that the vegetative mat or soil is not disturbed, and that blading of snow on trails and campsites shall be limited so as to leave an adequate protective cover. The Service believes that the minor disturbance of the vegetative mat or soil that may occur due to the operation of ground vehicles during the winter does not constitute a significant adverse effect. The Service agrees, however, that blading of snow can and must be limited so as to leave an adequate protective cover. This can be done by exercising the necessary degree of caution. Field Monitors will make on-site visits to ensure that, where snow comprises an important aspect of the surface's protective cover, its removal will be kept to the absolute minimum necessary and that it will be left in place if necessary to provide adequate protection to the underlying soil and vegetation. For these reasons, the recommended change in the first sentence of § 37.31(b)(1) is considered to be unwarranted and the recommended change in the second sentence of § 37.31(b)(1) has been adopted.

One commenter suggested that only flexitrack surface vehicles be permitted to operate in the coastal plain and that bladed vehicles used for snow removal be required to use surface guide skids. The Service disagrees with these suggestions. The guidelines are designed to accommodate the Service's judgment that while a flexitrack configuration may be necessary under certain conditions, there will also be situations where rigid tracks and sleds can be safely utilized without significant harm to the refuge's resources.

One commenter incorrectly construed § 37.31(b)(2) to preclude use of ground vehicles in areas where no snow is present even though they may be sufficiently frozen to support vehicles and naturally barren of vegetation and, therefore, this commenter felt § 37.31(b)(2) to be too rigid. The final rules provide for protection of vegetation and soil by requiring that adequate protection cover in the form of snow and/or a frostline be present. In areas where a frostline alone gives adequate protection, such as frozen mud flats, ground vehicles will be allowed.

One commenter suggested that, in view of the decreased potential for harming wildlife in the winter as compared to the summer, and the likelihood of getting better data during the winter, the regulations should state that winter operations are encouraged. Both the level of impact experienced and the quality of data obtained will depend on season and exploratory method and techniques. With the exception of precluding summer access by ground vehicle, which is known to cause significant impacts, the Service does not wish to limit options or creativity by favoring one season and method and/or technique over others.

One commenter recommended that specific months be named to identify winter and spring under § 37.31(b)(2) and that the use of ground vehicles be permitted in October. The references to winter and spring are intended to connote general climatic conditions rather than specific time periods. Although winter on the coastal plain is generally considered to extend from October through April and spring from May through June, ground vehicles will only be allowed to operate during times of adequate protective cover, which may not occur until December and end in early May. The specific periods and areas in which surface vehicle use will be allowed will be determined by the Regional Director or his Field Monitors. Several commenters thought that the use of large surface vehicles should be precluded throughout the year. The Service has not adopted this suggestion because such vehicles can be used without causing significant adverse effects when properly operated under correct conditions. The Service feels that the guidelines provide the necessary safeguards and limitations to assure their proper use. This issue is also discussed in the summary of comments on §37.11.

One commenter recommended that § 37.31(b)(3) be rewritten to prohibit the movement of equipment through riparian willow stands, except where no feasible and prudent alternative exists and with the Regional Director's express approval. The final rule will prevent equipment movement through riparian willow stands unless it is specifically approved by the Regional Director or his authorized representatives, to the extent they are authorized to act for him in this regard. Approval to intrude into willows will not be granted unless a real need exists. The suggested change would not result in improved protection nor would it alter the intent of the existing provision.

One commenter stated that heavy equipment should be prohibited from crossing riparian willow stands where the tips of willow shrubs protrude beyond the snow level. Again, the Service feels that no change in the rule was warranted by this comment. Whether a crossing will be permitted in such circumstances will depend on the exercise of professional judgment, after the examination of such matters as need, alternatives, and likely impact.

In response to criticism that the proposed § 37.31(b)(5) was too restrictive, the final rule has been revised to allow camping on lagoons which may not be frozen solidly to the bottom. The Service has, however, retained the restriction against camping on river ice in order to protect potential fish overwintering holes.

For clarity, the words "of waste" have been added to the requirement in § 37.31(b)(6) to keep campsites and trails clean.

Turning to § 37.31(b)(7) regarding the treatment of gray water, one commenter asked whether gray water includes sewage. It does not. Sewage is considered "waste" and it must be handled in accordance with § 37.31(e)(2). One commenter asked if the standard stated in § 37.31(b)(7) regarding the discharge of gray water is acceptable to the Alaska Department of Environmental Conservation. This question has prompted no change in the rule, as permittees are required by § 37.3(a) to obtain appropriate state permits, one of which is a wastewater discharge permit. In commenting on the proposed guidelines, the State did not criticize § 37.31(b)(7) as being inconsistent with state discharge standards.

The provision for the rehabilitation of disturbed areas found in § 37.31(b)(9) was criticized by one commenter as inconsistent with the mandate to avoid significant harm. The suggestion was made that rehabilitation be required to repair unauthorized cutting and disturbance, but that surface access not be permitted where it would result in disturbance to vegetation. These guidelines require that ground vehicles be operated only where there is protective cover sufficient to protect the vegetation and soil from significant adverse effects. No rehabilitation plan is

required to be included in the permittee's exploration plan, although a promise to comply with these guidelines and the Regional Director's orders is. The requirement for rehabilitation will be instituted by order by the Regional Director if surface disturbance or damage should occur which in his judgment warrants rehabilitation. For this reason the Service has not adopted the suggestion of one commenter that the rule state that rehabilitation shall be undertaken as soon as possible. Recognition that there may be a need for rehabilitation does not mean that the Service intends to permit significant harm to occur. One commenter asserted that the provision in § 37.31(b)(9) restricting rehabilitation to the use of endemic species of plants is overly restrictive and impractical. The Service disagrees. The use of endemic species has been proven successful, and practical methods for such rehabilitation have been developed on the North Slope.

Whereas one commenter felt that the proposed regulations infringed impermissibly on the jurisdiction of the Federal Aviation Administration (FAA) to regulate use of the navigable airspace and aircraft traffic, another commenter urged the Service to change the word "should" to "shall" in the last sentence of § 37.31(b)(10) in order to protect wildlife from aircraft from harassment. Another commenter wanted a specific rule dealing with the use of aircraft, including helicopters, and minimum flight altitudes. Another commenter wanted helicopter traffic to be carefully controlled and monitored. It is the Service's position that it does not have the legal authority to regulate aircraft use of the navigable airspace and, therefore, that it cannot establish minimum flight altitudes above the coastal plain. The Service does have the authority, however, under the Airborne Hunting Act, 16 U.S.C. 742j–1, to prevent the harassment of wildlife where such harassment is accomplished through the use of aircraft. Therefore, § 37.31(b)(10) is worded to prohibit the harassment of wildlife by any manner, including close approach by aircraft and to advise, rather than to require, permittees to maintain their aircraft at an altitude of at least 1500 feet above ground level whenever practicable. In effect, this rule means that overflight at less than 1500 feet will be viewed as a possible indication of harassment. By being so worded, the rule avoids infringing on the FAA's regulatory jurisdiction over use of the navigable airspace while at the same time protecting wildlife from harassment through the use of aircraft. The Service will closely monitor the use of aircraft for harassment. The correctness of the Service's position on regulating use of the navigable airspace for oil and gas exploration on the coastal plain is being litigated in a declaratory judgment action entitled "Trustees for Alaska v. Robbins", Civ. No. A82–340 (D.Ak., filed August 20, 1982). The words "at least" have been added to the advisory provision to clarify that the Service has no wish to discourage overflights at higher altitudes whenever they are practicable. One commenter urged that the 1500-foot advisory provision be limited only to fixed-wing aircraft, arguing that helicopters can operate effectively at lower altitudes without disturbing wildlife. The Service disagrees. Helicopters can be just as, and sometimes more, disturbing to wildlife.

One commenter urged the Service to establish a minimum forward speed for aircraft. This has not been done because establishment of such a requirement is also regarded as being beyond the authority of the Service.

The rule prohibiting detonation of explosives within ½ mile of a known denning brown or polar bear or any muskox herd was questioned as to its adequacy by one commenter. The rule is based on biological studies and the professional judgment of Service biologists. The rule has been expanded to prohibit detonation of explosives within ½ mile of any caribou herd.

Though not opposed to § 37.31(b)(14), one commenter noted that hunting, fishing and trapping rules are set by the Alaska Department of Fish and Game. Although this observation is correct as to resident wildlife, the Service has the authority to increase the restrictions on the taking of wildlife on refuge lands. Another commenter was concerned that the Service not prohibit local residents from hunting on the refuge. The Service does not intend to restrict fishing, hunting or other subsistence activities of non-permittees through § 37.31(b)(14).

Section 37.31(c) Aquatic environment. The need was suggested by one commenter for requirements limiting exploratory activities in coastal lagoon areas in order to protect ringed seals and migratory bowhead whales. The Service disagrees with the need for such requirements. Bowhead whales do not utilize the marine waters encompassed by the coastal plain, which are primarily shallow enclosed lagoons. Technical limitations will likely preclude the use of boat-based exploratory activities. Even if seismic exploration were to be conducted on lagoons during the open-water season, it would have little effect on either bowhead whales or ringed seals because these creatures generally stay well offshore of the area. Additionally, there is no need to restrict exploration on lagoon ice in the winter to protect ringed seals during their vulnerable pupping period, as has been recommended for offshore exploration programs in other areas, because of the lack of seal use of the coastal plain.

Subparagraph 37.31(c)(1) has been changed in accordance with the suggested wording of the State of Alaska to prohibit the alteration of banks and to require snow bridges to be free of dirt and debris, except that "significantly" has been inserted before "alter" to comport with the protection standard stated in section 1002(d)(1). The phrase "whichever occurs first" has been added to the end of § 37.31(c)(1) in response to the comment that the removal of snow bridges should be required prior to breakup whether or not their use has terminated.

Two commenters believed that § 37.31(c)(2) is too restrictive of water withdrawal, while several other commenters criticized the rule as being too permissive. The former argued that either specific streams, rivers, and lakes should be designated as water supply bodies or that field monitors should be delegated responsibility for on-site decisions as to use of water. The latter group of commenters argued variously that water withdrawal should never be allowed, never be allowed during the winter, or never be allowed during the winter in fish-bearing waters. As a major objective of the rule is to maintain fish habitat during the critical winter period, the rule has been clarified to simply prohibit water removal in fish bearing waters during the winter, per the State's suggestion. This will allow water use from surface sources devoid of fish, and will alleviate the necessity for time-consuming inspections of potential sources by monitors. The proposed § 37.31(c)(5) has been subsumed in § 37.31(c)(2). This should answer one commenter's question about how exploration personnel will know about the location of river pools.

Although two commenters suggested that the ⅛ mile limit on the detonation of explosives near water proposed in § 37.31(c)(3) was inadequate, the State of Alaska commented that it was too restrictive. Subparagraph 37.31(c)(3) has been revised in accordance with language recommended by the State, except that use of charges in excess of 100 pounds are required to be approved. One commenter suggested that the prohibition against disturbance of fish

spawning areas in § 37.31(c)(4) be expanded to include fish overwintering and nursery areas. The Service agrees and has so modified the rule. Another commenter recommended that the term "significant" and the phrase "identified by the Regional Director" be deleted from § 37.31(c)(4). This commenter argued that "significance" with respect to siltation or pollution of water bodies is difficult to ascertain until after the fact, especially in winter. Use of the term "significant" is based on the plain language of section 1002(d)(1), as discussed previously. It would be unreasonable to penalize a permittee for causing minor amounts of siltation or water pollution where they do not constitute significant adverse effects. The fact that the location of all fish spawning, over wintering and nursery areas are not known lead the Service to conclude that the most fair and effective course is to identity these areas for special protection as they become known.

The proposed § 37.31(c)(7) has been eliminated because of the changes to § 37.32 which are discussed below.

Section 37.31(d) Cultural resources. One commenter stated that the protections provided for cultural resources are inadequate and suggested that the regulations unnecessarily restrict the Regional Director's authority to fully protect the resources. The Service disagrees. The final rule is congruous with the requirements of Sections 106 and 110 of the NHPA, as amended, 16 U.S.C. 470f and 470h–2, its implementing regulations, 36 CFR Parts 60 and 800, and Executive Order 11593, 36 FR 8921 (May 13, 1971). These authorities permit both beneficial and adverse uses of some historic and archeological sites, provided proper measures are taken to consider and mitigate adverse effects. Thus, these guidelines recognize the flexibility underlying the statutory scheme for the protection of historic and archeological resources. Another commenter noted that, because of the limited quantity of baseline information on cultural resources available, the Regional Director should take a conservative position on their protection. The Service is following this approach by means of the terrestrial and general environmental safeguards contained in §§ 37.31 (b) and (e) and the stipulations that will be included in individual permits, as well as the provisions of § 37.31(d).

One commenter construed §§ 37.11(b)(2), 37.13(a), and 37.22(a), providing for avoidance of unnecessary duplication of exploratory activities as including avoidance of unnecessary duplication of archeological and historic survey requirements. The Service agrees and the stipulations and orders instituted by the Regional Director in implementing § 37.31(d) will further serve to guard against unnecessary duplication. One commenter suggested the need for a procedure to be used by the Service to notify the National Park Service of the discovery of archeological and historic resources eligible for the National Register of Historic Places during exploration. A programmatic memorandum of agreement between the Service, the Advisory Council on Historic Preservation (ACHP) and the State Historic Preservation Officer (SHPO) will provide for expeditious treatment of emergency discovery situations. Reference to the agreement has been added to § 37.31(d)(3).

Three commenters expressed concern that the guidelines improperly delegate the Service's historic preservation responsibilities to its permittee. This is not the case. The Service is taking full responsibility for assuring that historic and archeological resources are properly identified, evaluated and protected. The final rules establish the means by which the Regional Director can require a permittee to carry out certain survey and analytical tasks and mitigation measures, which are made, be necessary at this time by the permittee's authorized exploration. The Regional Director will carry out certain consultation activities that will remain Service responsibilities in accordance with Sections 106 and 110 of the NHPA. The Regional Director will establish standards for the permittee's work which are consistent with 36 CFR Parts 60 and 800, monitor performance, and work with the permittee to assure that the standards for avoidance and data recovery are met.

Two commenters criticized the proposed § 37.31,(d)(2)(iii) on the ground that the discharge of petroleum or petroleum products should not be permitted anywhere within refuge boundaries. Adopting the suggestion that the prohibition against deliberate discharges should be all-inclusive, the service has moved it to § 37.31(e)(3) and included toxic materials with its scope.

Two minor changes have been made in § 37.31(d)(3). The phrase, "after September 30, 1983" has been deleted because, with the delay in the promulgation of these guidelines and the changes in § 37.21(b) noted above, it no longer serves a meaningful function. In addition, language has been added to clarify that the Regional Director, in accordance with the programmatic memorandum of agreement, can tell a permittee how to mitigate or avoid significant adverse effects on properties eligible for the National Register. Lastly, the heading of § 37.31(d) has been changed from "Human environment" to "Cultural resources" to conform more closely to the scope of the rule and standard usage.

Section 37.31(e) General. One commenter questioned whether oil spills are intended to be included under § 37.31(e)(1). Yes, that is the Service's intent. Oil is a petroleum product and, therefore, under the definition given to hazardous substances in § 37.2(k), oil spills are covered by §§ 37.31(e) (1) and (3).

Based upon a comment received from the State of Alaska, § 37.31(e)(2) has been modified to require all non-combustible solid waste, which includes fuel drums and shot wire, to be returned to a permittee's base of operations and all combustible solid waste to be incinerated or returned to a permittee's base of operations. Because section 37.31(e)(8) prohibiting permanent structures and facilities precludes a permittee's base of operations from being located within the coastal plain, the effect of § 37.31(e)(2) is to preclude the disposal of solid waste on refuge lands.

Subparagraph 37.31(e)(4) is one of the rules being adopted to implement section 1002(d)(1)(C). The words "per year" have been removed because its purpose is to restrict the number of survey crews working for all permittees anywhere within the coastal plain at any particular point in time and not the total that may work for all permittees throughout one year. It has also been modified to specify the maximum number of surface geological survey crews that will be allowed to work at any one time. These crews and their necessary equipment, facilities, and personnel are in addition to the maximum number of seismic crews, and their necessary equipment, facilities, and personnel, that may be permitted.

One commenter suggested that § 37.31(e)(5) be reworded to require the Regional Director's approval for the location of only permanent fuel storage facilities near water bodies. This suggestion has not been adopted. The Service agrees that there will be a need for small caches of fuel in the vicinity of temporary campsites. The wording of § 37.31(e)(5) enables the Regional Director to allow temporary fuel storage within flood plains when necessary. However, the Service intends to discourage this practice when there are viable alternatives as it increases the

risk of water contamination due to fuel spills. Under § 37.31(e)(8), no permanent fuel storage facilities are permitted within the coastal plain.

Another commenter recommended that the normal 100-foot buffer around other water bodies provided for in § 37.31(e)(5) be increased to 500 feet and that the rule also require fuel containers to be surrounded by impermeable dikes. The suggested changes are deemed unnecessary. As indicated above, the Service feels that the existing rule is sufficient to protect water bodies. The Service believes that the damage to soil resulting from berm construction has a greater potential for adversely impacting surface values than does the relatively minor and local risk of fuel spillage. In addition, a new sentence has been added to § 37.31(e)(5) requiring large fuel containers to have double walls.

One commenter recommended that all shot wire, in addition to all fuel containers, be required to be identified by owner. The Service considers the marking of shot wire to be inpracticable. Moreover, littering will not be allowed. Removal of debris will be enforced by on-site monitoring.

Several commenters recommended that support facilities, staging areas, and base camps be located only at existing developed sites, such as Camden Bay, Beaufort Lagoon, or Barter Island, or outside of the refuge entirely. There appears to be a misunderstanding by the commenters on the use of these terms. The Service considers permanent structures or facilities to include such things as airstrips and workpads built on gravel, base camps or bases of operations, and staging areas, and, therefore, as such, they are precluded from being located anywhere within the coastal plain by § 37.31(e)(8). Furthermore, the installation of temporary structures and facilities, such as ice airstrips and navigational towers, requires the prior approval of the Regional Director. As to these kinds of facilities, the Service does not intend to limit their location solely to the three areas mentioned above as they are too distant from all areas of the coastal plain to meet a permittee's needs and because they have relatively little impact. Cat-train or other mobile or temporary camps are not regarded as temporary facilities for the purposes of § 37.31(e)(8); their location is instead governed by § 37.31(b)(5).

The Service feels that no change in the guidelines is warranted by the suggestion of one commenter that the people of Kaktovik should be consulted and given the right of first refusal if a staging area or base camp were proposed to be located there. Nothing in the guidelines mandates the location of a staging area or base camp at Kaktovik, nor do they preclude Kaktovik from exercising any of its options in response to such a proposal.

One commenter urged the Service to reword § 37.31(e)(8) to allow for the implacement of new permanent survey markers by permittees to aid exploratory activities. This change was not adopted because the Service feels that other survey techniques and sufficient geodetic land survey monuments already exist to serve this need.

The Service has, however, reworded § 37.31(e)(8) slightly. First, the term "coastal plain" has been substituted for "refuge" because it is more accurate; this change should not be misconstrued to mean that the Service intends to permit permanent structures to be located on refuge lands outside of the coastal plain. Rather, it simply clarifies that this rule is not intended to preclude a permittee's operations from being staged from Kaktovik should such arrangements be worked out. Second, the word "facilities" has been added to clarify that the rule also covers sites that might be developed in conjunction with exploration operations. Lastly, the word "ice" has been inserted to clarify that airstrips built on ice are considered to be temporary facilities. Airstrips built on gravel, as distinguished from those using existing gravel bars, are regarded as permanent facilities and, therefore, precluded by the rule.

Section 37.32 Special areas. Three commenters criticized the proposed rule for incorporating by reference maps which were not published in the EIS or elsewhere. Three commenters criticized the proposed rule for lacking specificity as to the types of restrictions that would apply to designated areas. One commenter recommended that special areas be designated for birdlife and overwintering fish. One commenter stated that no exploratory activities should be allowed in muskoxen calving areas, in polar bear denning areas or in the Sadlerochit Spring area. One criticized the rule for not closing the entire coastal plain to exploratory activities during the caribou calving and post-calving seasons and for suggesting that exploratory activities might be restricted rather than entirely prohibited in other special areas. One commenter stated that the rule should give the Regional Director more flexibility for citing closures dates on sensitive caribou calving and post-calving areas.

Section 37.32 has been rewritten in response to these comments. Rather than designating special wildlife areas in which no or limited exploratory activities are permitted by reference to maps on file at the refuge office, the rule requires the Regional Director to designate within certain generally described areas specific special wildlife areas which are closed to exploratory activities for specific periods determined by the Regional Director to be necessary or appropriate to protect such wildlife from significant adverse effects. Subparagraph 37.32(a) requires the Regional Director to designate caribou calving and post-calving special areas within the coastal plain which are closed to all exploratory activities at specified times. Not all portions of the coastal plain are used every year for caribou calving and post-calving activities, nor do such activities occur at the same times or at the same places within the coastal plain in successive years. Thus, closure of the entire coastal plain to exploration during the caribou calving and post-calving seasons is not necessary to ensure that calving and post-calving caribou are protected from significant adverse effects. One commenter wanted the term for the closure of caribou special areas to be extended through August. Subsection 1002(d)(1)(A) concerns caribou during the calving and post-calving phases. The post-calving aggregation stage is normally completed by July 15. Even though there may be small groups of caribou widely dispersed throughout the coastal plain after this date, these caribou are must less vulnerable to exploratory activities because their post-calving aggregation phase has ended. Accordingly, the term was not extended through August.

Because muskoxen and snow geese move around within the coastal plain, the rule seeks to inform the reader of those general areas within the coastal plain in which the specific areas used by calving muskoxen or staging snow geese will be located. The rule on the muskoxen special area does not cover the period normally used for muskoxen post-calving, as was suggested by one commenter, because it is not well established that this is a period of heightened biological sensitivity for this species.

Paragraph 37.32(e) gives the Regional Director the discretion to designate additional special areas, such as, for example, major waterbird nesting areas, in which exploratory activities may be prohibited, conditioned or restricted by the Regional Director. Such designated areas may cover lands the surface estate in which is owned by holders of approved native allotments or the Kaktovik Inupiat Corporation. This was added to enable the Regional Director to

protect improvements and prevent conflicts with other surface uses, including subsistence, by imposing conditions on exploratory activities.

Paragraph 37.32(f) states that the Regional Director shall notify the permittee of the locations of the special areas designated pursuant to §§ 37.32(a) through (e) and of the applicable limitations on its activities as far in advance as possible. Because the locations of such special areas, as well as the dates during which the areas are used for such special purposes, may vary from year to year, it may not be possible to notify the permittee until shortly before the applicable limitation goes into effect. The Service intends to work as closely as possible with permittees in carrying out this rule to minimize disruption of their scheduled activities. The last sentence of § 37.32(f) has been added to clarify the Regional Director's authority to modify or remove limitations on exploration when they are no longer needed.

Paragraph 37.32(g) effects a permanent, year-round closure of the area surrounding Sadlerochit Spring. The Service did not adopt a ¾ mile radius buffer around the spring, as was suggested by one commenter, because it does not feel that such a wide buffer is necessary.

Section 37.33 Environmental briefing. One commenter suggested that at least two environmental briefings be held per field season. Though not adopting this specific suggestion, the Service has modified the final rule to permit the Regional Director to require a permittee to have its field personnel participate in additional environmental briefings whenever the Regional Director determines that they are needed.

One commenter recommended that the North Slope Borough be consulted during the structuring of the environmental briefing materials. Of course, the NSB is free to offer its suggestions to the Service at any time, but the most appropriate time for the NSB to make its environmental concerns known is during the public review and comment period for exploration plans. Beyond this, the Service does not envision formal consultations with the NSB for the purpose of preparing its briefing materials.

Section 37.41 Responsibilities of the Regional Director. One commenter criticized these guidelines for giving too much discretion to the Regional Director. The Service disagrees with this criticism. The final rules provide appropriate controls for the exercise of the Regional Director's discretion. These controls encompass both standards and procedures for decisionmaking. At the same time, the final rules preserve the discretion that is necessary to tailor administrative decisions to particular factual situations and to ensure fairness in the application of governmental powers.

Another commenter stated that § 37.41 should require the Regional Director to consult with the Minerals Management Service (MMS) and GS on all matters relating to approval and administration of exploration plans. As noted earlier, the Regional Director intends to seek the technical advice and assistance of BLM (into which all of MMS' onshore mineral management functions were consolidated by Secretarial Order No. 3087 (December 3, 1982)) and GS in such matters. This will be done through the more appropriate vehicle of a memorandum of understanding and, therefore, the suggested change is not needed.

Five commenters opposed and one commenter supported vesting adminstrative responsibility for the section 1002 program in the Regional Director. Those opposed to the Regional Director's role construed the guidelines as removing the Refuge Manager and thus his knowledge of local conditions from the decisionmaking process for the program. This assumption is erroneous. Paragraph 37.2(r) defines "Regional Director" to include his authorized representative. As such, the Refuge Manager, as well as his staff, will be actively involved in the supervision of field activities. The sound policy grounds for vesting primary control in the Regional Director include his greater capacity as a regional official to shift and commit personnel and other resources necessary to carry out the many tasks associated with implementation of the section 1002 program and to obtain and coordinate needed cooperation between the Service and other agencies. Moreover, despite the suggestions of some of these commenters, the management needs for controlling the oil and gas leasing program at the Kenai National Wildlife Refuge are not comparable to those for authorizing oil and gas exploration of the coastal plain. The oil and gas leasing program at Kenai is well established and the administrative procedures associated with it have become routine. On the hand, the § 1002 program covers a larger geographic area with more species of international significance, is highly controversial, and calls for the resolution of novel questions.

Two technical amendments have been made to § 37.41. The words "and disapprove" have been added to the opening clause merely for clarity and the word "approved" has been deleted as an adjective for plan of operation since the final rules do not require such plans to be approved.

One commenter stated that this rule should also cover expressly the identification of cultural resources. This rule is not intended to list explicitly all of the Regional Director's duties. Those not listed are adequately covered by "perform all other duties assigned".

Section 37.42 Inspection and Monitoring. A number of commenters felt that the proposed rule was inadequate. Eight commenters apparently construed the first sentence of § 37.42 to mean that the Service's monitoring program will be discretionary. That is not the Service's intent. The Service intends to have an active monitoring program, but it does not agree with the views of twenty-six commenters that a full-time monitoring program, in which Field Monitors are assigned to accompany all work crews, is necessary. Indeed, the Service feels that a constant association between Field Monitors and work crews might undercut effective enforcement. The important provision to focus on is the one which states that the Regional Director, which includes his authorized representatives and his Field Monitors, has a continuing right of access for inspection and monitoring.

Whereas one commenter stated that the Field Monitors should be full-time Service employees and not volunteers, state officials, or parties working under contract, five other commenters felt that local and regional representatives should be formally included in the monitoring program. Three commenters suggested the need for an interdisciplinary team of Field Monitors. The Service intends to use an interdisciplinary team of professionals to do its field monitoring. It is possible that local and regional representatives may occasionally accompany Field Monitors on a space-available basis where such arrangements can be worked out with the permittee. On those occasions, the local and regional representatives would not be representatives of the Regional Director or authorized to exercise his authorities, and the permittee would not be expected to underwrite their expenses. One commenter suggested that a program be established under § 37.42 to allow local residents to inform the Service of any violations that they observe. This is a good suggestion, but no change in the rule is necessary to accommodate it.

One commenter thought the proposed rule gave the Field Monitors too much authority, but another thought they were

given too little. Five commenters stated that Field Monitors should be empowered to issue stop work orders. The rule has been modified to provide that a Field Monitor may exercise such authority of the Regional Director as is provided by delegation. But, the rule precludes the Regional Director from authorizing one acting as a Field Monitor to revoke a permittee's special use permit pursuant to § 37.44. It also requires the concurrence of the Regional Director or his authorized representative in any order issued by a Field Monitor suspending a permittee's entire field operations. The rule does not, however, require the concurrence of the Regional Director or his authorized representative in any order issued by a Field Monitor ordering the permittee to stop specific exploratory activities or suspending the permittee's authorization to carry out specific exploratory activities. For example, the rule does not preclude the Regional Director from delegating to a Field Monitor the authority to issue, without having obtained his concurrence, an order ordering a permittee to stop detonation of explosives in a particular area or suspending exploratory activities in that area if the Field Monitor finds that the permittee is detonating explosives within ½ mile of a know denning bear.

Three commenters endorsed the requirement that advance notice be given to permittees when the Service wishes them to supply its Field Monitors with lodging, meals, and other services. One of these commenters urged the qualifying phrase "whenever possible" to be deleted from the last sentence of § 37.42 on the ground that advance notice should always be possible, and also, along with another, suggested that the word "written" be deleted on the ground that verbal notice would be adequate. The one commenter favoring written notice stated that it should include the names of visitors, their titles, expected duration of visit, the type of logistical support required, and the specific purpose of their visit. The Service feels that the required notice need not specify more than is indicated. However, as a practical matter and depending on the circumstances, such additional information may be voluntarily supplied. One commenter stated that advance notice of inspections should not be required because they should be unanticipated to be effective. This commenter misconstrued the purpose of the last sentence of § 37.42. It does not require advance notice of all monitoring and inspection activities. Rather, it requires advance notice, whenever possible, of the need for logistical support to be supplied by permittees for Field Monitors or other representatives of the United States. Such support may not always be needed. Based on these comments, the last sentence of § 37.42 has been changed to eliminate the requirement for such notice to be written.

Two commenters suggested that the Service's monitoring program should include field documentation of monitoring activities. The Service agrees with the suggestion, but does not feel that the details of its monitoring program need to be incorporated into the rule.

Section 37.43 Suspension and Modification. Four commenters objected to a provision in the proposed rule that, if adopted, would have allowed the Regional Director to suspend exploratory activities when he deemed them to be no longer necessary. These commenters questioned the legality of the proposed provision as well as the competence of the Regional Director to make such a judgment. The Service has deleted the provision on the belief that the rule otherwise provides the Regional Director with adequate authority to suspend exploratory activities should he have the need to do so.

Three commenters suggested that the Regional Director should be required to consult with a permittee before suspending its exploratory activities or modifying its exploration plan or special use permit, and two commenters suggested that the rule be modified to give a permittee the opportunity to correct any deficiency before allowing the Regional Director to act thereunder. Neither suggestion has been adopted because the Service does not wish to so constrain the Regional Director's authority. However, the Service recognizes that suspension of exploratory activities and/or modification of an exploration plan or permit are serious remedies and, for that reason, feels that both suspension and modification are unlikely to occur without prior notice and/or consultation. One commenter recommended that the rule be modified to limit suspensions and modifications for reason of non-compliance to significant or substantial non-compliance. Again, the Service does not wish to so constrain the Regional Director's discretion, but it does not expect that he will take his authority lightly. One commenter suggested that the rule be modified to provide for an extension of the permit term for a period equivalent to the period of suspension. In view of the change allowing multi-year permits, this change is not necessary.

One commenter expressed concern that the waiver provision could result in a reduction in environmental protection. The Service does not intend to grant a waiver if doing so would result in significant adverse effects to the refuge's resources. However, circumstances change and experience may lead the Regional Director to conclude that performance or enforcement of particular permit provisions, some of which may have nothing to do with environmental concerns, is not necessary. For this reason the Service does not agree with the view point of some commenters that no waiver should be permitted or that the rule provides an inadequate check on the exercise of the Regional Director's discretion.

Section 37.44 Revocation and relinquishment. Consistent with the changes in §§ 37.21–37.24, the word "approved" has been deleted as a modifier of the term "plan of operation". The words "or relinquishment" have been added to the third sentence of this rule to clarify that, by relinquishing or giving up its authorization to conduct exploratory activities, a permittee cannot terminate its liability for clean-up costs incurred under § 37.31(a), its obligation under § 37.53(a) to submit all data and information that it has acquired or processed, etc., as a result of carrying out exploratory activities, its obligation under § 37.53(g) to inform the Department on request of the persons to whom it has provided raw data and information at fair cost, and other obligations.

Section 37.45 Exploration by the U.S. Geological Survey. One commenter stated that all sections of 50 C.F.R. Part 37 should apply to GS and its subcontractors should its exploration plan be approved. The Service does not agree. Since GS can only conduct exploratory activities in those areas where no one else has submitted a plan which satisfies the regulations of Part 37, it is likely that if GS conducts any exploration it will be in areas where others have no interest. Therefore, it is not sensible to make § 37.13 concerning group participation applicable to GS or its contractors and subcontractors. Little would be gained by applying the requirements of § 37.46 concerning cost reimbursement to GS and its contractors and subcontractors. Little would be gained by applying the requirements of § 37.46 concerning cost reimbursement to GS and its contractors and subcontractors because doing so would ultimately only lead to the government reimbursing itself. Accordingly, a new

sentence has been added to § 37.45 clarifying the application of Part 37 to GS' contractors and subcontractors. In addition, the exemption for GS from the bonding and civil penalty provisions of Part 37 has been retained as it makes no sense to apply them to another governmental agency. GS and its contractors and subcontractors have been exempted from the provisions dealing with processed, analyzed and interpreted data or information, as data acquisition, processing, analysis and interpretation done by GS or on its behalf is financed by public funds and, therefore, the Department has no intention of withholding such data and information from the public. Access to such data and information may be obtained by invoking the Freedom of Information Act (FOIA). GS has been exempted from § 37.54(d) because the last sentence of that paragraph is not intended to apply to intradepartmental transfers of information or transfers made under §§ 37.54(b) and (c).

Section 37.46 Cost reimbursement. Eight commenters objected to this rule as unfair for various reasons. Some felt that it was designed to recover all of the goverment's regulatory and administrative costs for the section 1002 program. This is not the case. Section 37.46 does not permit the Department to recover its costs in doing the baseline study required by section 1002(c), in promulgating these guidelines or preparing the associated environmental impact statement, in handling the litigation that has already occurred over the section 1002 program, or in preparing the report to Congress that is required by section 1002(h).

Some felt that the government and the public and not the permittees, are the principal beneficiaries of the program and, therefore, that the charges allowable under the rule are not comparable to standard user changes. The benefits the government and the public may receive from access to geological and geophysical data and information obtained through their privately funded exploratory efforts in no way diminish the benefits that permittees will receive from participating in the program. These include permission to use refuge lands to conduct exploration and the opportunity to gather data and information that can be used by the permittees to participate on an informed basis in the public debate over the future use of the refuge; to urge Congress to open the refuge to leasing, should such exploration lead to the conclusion that the coastal plain possesses oil and gas reserves worthy of development and production; to participate in future lease sales, should leasing be authorized; and to sell such data and information to those interested in participating in future lease sales. Obviously, private companies would not be willing to invest the millions of dollars that will be necessary to carry out oil and gas exploration on the coastal plain without the expectation of receiving substantial benefits in return for their investment. The charges allowable under the rule are for expenses that would not necessarily be incurred but for the desire of applicants and permittees to explore the coastal plain.

Three commenters objected to this rule because applicants and permittees have no control over the costs that they may be required to be reimbursed. While this may be true, the rule does require the Regional Director to notify an applicant or permittee of estimated reimbursable costs at various stages and provides a mechanism to contest costs that are changed to an applicant or permittee.

§ 37.47 Civil penalties. One commenter requested that this rule be broadened to allow restitution for the loss or impairment of subsistence rights and life styles. This has not been done because the purpose of § 37.47 and the statutory provision on which it is based, § 1002(g), is the punishment of certain violations and not the recovery of damages that might be associated with those violations. For this reason, the suggestion that subsistence users or the city of Kaktovik be given the right to appeal the decision of an administrative law judge under § 37.47(h)(1) has not been adopted.

Without being more explicit, one commenter stated that the rule appears to go far beyond section 1002(g) of ANILCA. The Service disagrees. The rule merely provides the procedures for implementing section 1002(g).

One commenter stated that any mailings required of the government under § 37.47 should be of such a nature as to assure receipt by the permittee. The rule has been modified to require notices of violations and notices of assessment to be served personally or by registered mail. This change should assure receipt by the respondent. This change should also eliminate this commenter's due process concern about the requirement in § 37.47(e) that a request for a hearing be received within 45 days of the date of the issuance, rather than the service, of the notice of assessment.

One commenter suggested that § 37.47 provide for notice and demand, accompanied by a reasonable time to correct any deficiency before a notice of violation is issued. The Service does not feel that this change is necessary. Because initiation of the civil penalty process is a serious matter, it is highly likely that the respondent will be informed, through warnings and efforts by the Service to secure compliance, of the grounds that provide the basis for the notice of violation. In addition, no civil penalty can be assessed until 45 days after the notice of violation. This gives the respondent time to correct any deficiency. In assessing the civil penalty, the Solicitor must take into account the respondent's good faith efforts to achieve timely compliance after receiving notice of the violation.

One commenter criticized § 37.47(a) for appearing to exclude from its coverage violations of stipulations and orders which are applied outside of a special use permit. Subsection 1002(g) authorizes the Secretary to penalize a violation of any provision of an approved exploration plan, of any term or condition of a special use permit, or of any act prohibited by these guidelines. Some stipulations and orders issued by the Regional Director or his Field Monitors may be issued as amendments of a permittee's permit. If they are, § 37.47(a) would apply to them. But when they are not, the permittee may still be penalized under § 37.47(a) for conduct not in compliance with such stipulations and orders if that conduct also constitutes a violation of its approved exploration plan or an act prohibited by the guidelines.

One commenter criticized § 37.47(j) for permitting the Solicitor to remit any civil penalty which is imposed pursuant to § 37.47. Remission is an equitable remedy, which permits the government for reasons of equity to mitigate the harshness of a penalty. Paragraph 37.47(h) is based on Section 1002(g)(4). An act of remission does not acquit a petitioner from the existence of a civil penalty.

Section 37.51 Operational reports. Three commenters recommended that monthly rather than bi-weekly progress reports be required under § 37.51(a). This recommendation has not been adopted because the requirement for progress reports to be submitted every two weeks, as the rule is now worded, is reasonable.

One commenter wanted the city of Kaktovik to be included at the end of the first sentence in § 37.51(a). One commenter wanted free access to all operational reports for the North Slope Borough and the people of Kaktovik. One commenter erroneously stated that the regulations do not specifically allow

for public access to operational reports, and noted that making them accessible under the FOIA would be consistent with § 1002. It is the Service's intent that access to these reports would be handled by the last sentence of § 37.54(a), which refers to FOIA.

One commenter recommended that semiannual reports be submitted on February 1 and August 1 in order to allow more time for data processing and evaluation. This recommendation was adopted together with language allowing the Regional Director the flexibility to require their submittal at other times should he wish to do so. Of course, if the Regional Director invokes this clause, he will require their submittal in time for them to be used in preparing the report to Congress required by Section 1002(h) of ANILCA.

One commenter assumed that the adverse effects on cultural resources referred to in § 37.51(b)(4)(ii) were those acceptable to the Service, the ACHP and the SHPO. No, this is not the Service's intent. Mitigation or avoidance of adverse effects that can be anticipated is covered by § 37.31(d). The provision here deals with unanticipated and inadvertent adverse effects.

Section 37.52 Records. One commenter questioned the significance of the date, September 2, 1989. Another stated that the requirement to keep records for inspection until September 2, 1989 is costly and burdensome and, instead, suggested 3 years as a reasonable period for keeping records. The date, September 2, 1989, is three years after the date by which the Secretary must submit the report required by Section 1002(h) to Congress. The three-year period is borrowed from federal procurement regulations.

Section 37.53 Submission of data and information. For simplicity, the second sentence of § 37.53(a) has been rewritten to refer to raw data and information and processed, analyzed and interpreted data or information since these terms are defined in § 37.2. This change is not intended to change the intent of this rule.

One commenter opined that mandatory submission of proprietary geophysical and geological data constitutes an unconstitutional taking of property. The Service disagrees. The required submission of such data is the *quid pro quo* for permission from the government to explore refuge lands. Three commenters recommended that all data and information submitted under this rule be submitted solely to the Secretary. The Secretary's Office does not have the facilities necessary to receive and handle such data and information.

Two commenters asked that the government reimburse a permittee for the cost of reproducing data and information submitted under the rules and for the cost of putting such data and information in any form requested by the Regional Director that is not usually used by the permittee. This has not been done because Section 1002(e) does not authorize the Department to reimburse a permittee for such costs.

One commenter doubted whether the Service realizes the enormity of the material required to be submitted under § 37.53 and suggested, along with another commenter, that a permittee, instead, notify the Regional Director about what is available on a monthly basis and supply that which he then requests. In response to this comment, the last sentence of § 37.53(a) has been modified by insertion of ", unless directed otherwise by the Regional Director" and by substitution of "annual quarter" for "month".

The phrases ", if obtained," and "as much as possible" have been added to §§ 37.53(b)(1) and 37.53(c) respectively at the suggestion of another commenter. For the convenience of those required by § 37.53 to furnish data and information, the proposed § 37.54(b), dealing with the marking of confidential information, has been inserted as § 37.53(e), and its text has been modified slightly on account of this move.

One commenter suggested that the proposed § 37.54(b), now § 37.53(e), be modified to provide for the marking of tapes and other types of data and information not amenable to page marking. This has been done.

Two commenters wanted "raw" to be substituted for "processed" in § 37.53(c) to facilitate public use of raw data. The Service feels that a permittee's compliance with §§ 37.53(a) and (b) should be sufficient to satisfy our obligation a permittee has to the public in this regard.

Five commenters stated that a submitter should be given notice and an opportunity to comment before the Department changes its "confidential" classification of data and information. No change in § 37.53(f) was made on account of this recommendation because departmental procedures for implementing FOIA, which are incorporated by reference in § 37.54, require, under 43 CFR 2.13(h), the official responsible for processing a FOIA request to seek, when it is administratively feasible to do so, the views of the submitter on whether the record requested should be released.

Paragraph 37.53(g) has been added as a final rule on an interim basis to give the Department a means of enforcing the prohibitions mandated by section 110 of Pub. L. 97–394. Comments on § 37.53(g) are invited. For more information, see the discussion of § 37.2(a) above.

Section 37.54 Disclosure. Twenty-four commenters objected to this rule because they thought that it does not require the disclosure of enough information to the public, and twenty-four others objected because they thought that it requires the disclosure of too much information to the public. The first group wanted all data and information gathered as a result of exploration to be made public. The second group's primary concern was that the disclosure of raw data, as defined in § 37.2(p), would enable a permittee's non-participating competitors to process the data and obtain processed, analyzed and interpreted data or information at substantially reduced costs. Several also expressed the concern that, due to the Service's broad definition of raw data, the fear that the disclosure provisions would be unfairly used to the competitive and economic disadvantage of the permittee would undermine the statutory goal of having private industry undertaken and fund exploration of the coastal plain. These commenters offered several solutions. Some thought that all geological and geophysical information should be treated confidentially. Some thought the definition of raw data should be narrowed. One of these suggested limiting raw data to field observation notes and survey plans. Three recommended prohibiting any commercial use of disclosed raw data. Ten recommended charging a user fee for any data disclosed comparable to the cost that a purchaser or group participant would pay. Seven recommended adjusting the timing on when raw data could be released, by deferring their availability until the report required by section 1002(h) is submitted to Congress or for a period of years after a lease sale of the area from which they were obtained or for a reasonable period of time. The Service considers the need for changes in that part of the rule dealing with the disclosure of raw data on account of these comments to have been abrogated by the passage of section 110 of Pub. L. 97–394 for the reasons discussed above under the commentary on §§ 37.2(a), 37.2(o) and 37.2(p). The Service has, however, decided not to make raw data available public disclosure until the Secretary submits the report required by § 1002(h) of ANILCA to Congress. Deferral of availability for public disclosure until that date will eliminate the endless and more importantly,

perhaps erroneous speculation that might otherwise occur should raw data and information be disclosed in a piecemeal fashion as they are submitted to the Regional Director, while at the same time preserving the congressional goal of assuring access to such data and information so as to enable a full public discussion and debate on the future use and development of the refuge.

The Service has also, after considering the recommendations of several commenters, lengthened the period of confidentiality provided for processed, analyzed, and interpreted data and information. This has been done to prevent the competitive harm that might otherwise occur due to the extrapolation of a permittee's processing, analytical and interpretive methodologies from the disclosure of processed, analyzed and interpreted data or information. That period is now 10 years from submission or 2 years from lease sale, whichever is longer.

One commenter pointed out that federal law allows the Department to withhold from the public information on the location of important archeological and historic properties if its disclosure might result in their harm. Nothing in §§ 37.21(d) and 37.31(d) requires such site-specific information to be located in an exploration plan. Furthermore, the last sentence of § 37.54(a) enables the Department to invoke such statutes through application of exemption 3 to the FOIA, 5 U.S.C. section 552(b)(3), to withhold such information.

One commenter contended that the disclosure provisions violate exemptions 4 and 9 to FOIA, 5 U.S.C. § 552(b)(4) and (9). The Service disagrees with the conclusion. This commenter recommended that § 37.54(a) be rewritten to require the withholding of data or information that could be used to the unfair competitive disadvantage of any permittee by invocation of exemptions 3, 4, and 9 to the FOIA.

This change was not adopted because of the enactment of section 110 of Pub. L. 97–394, discussed above.

One commenter recommended the addition of language to § 37.54(b), formerly § 37.54(c), the subject any government employee, agent or third party to a court action for civil damages. The Service's authority to impose this remedy by regulation is questionable. In any case, internal disciplinary measures should provide a sufficient deterrent against unlawful disclosures by employees. The Service has simplified the language of § 37.54(b). In doing so, it has not intended to affect its meaning or scope. The Service continues to construe it to permit the Department to disclose processed, analyzed and interpreted data or information to agents or third parties for reproducing, processing, reprocessing, analysis and interpretation, as well as for other authorized activities. One commenter recommended the phrase "whenever practicable" be deleted from § 37.54(b). This suggestion was not adopted. The Service considers the guidelines adequate to meet the needs and concerns of this commenter.

Another commenter recommended that processed data be provided to the Alaska Department of Natural Resources. This suggestion has been accommodated by including the State of Alaska in § 37.54(c). The phrase "upon proper request" has also been added to this paragraph. This addition is not intended to change the paragraph's purpose, which is to notify permittees of the possibility that under certain circumstances the Department will give their confidential data and information to those entities listed. This phrase has been added to clarify, however, that the Service does not foresee doing so routinely.

Paragraph 37.54(d) was added as a final rule to implement on an interim basis the mandatory prohibition in section 110 of Pub. L. 97–394 against the commercial use of data and information obtained from the Department. It includes a requirement for a certified statement acknowledging this prohibition and the disqualification stated in the first sentence of § 37.4(b) as a condition of obtaining access to any data and information under § 37.54. Such a certified statement will help to educate requesters about the consequences of obtaining such data and information from the Department and the restraint on their use, as well as help the Department to enforce them. Comments on § 37.54(d) are invited. For more information, see the discussion of § 37.2(a) above.

In addition to the changes mentioned above, a number of minor and technical changes have been made on these guidelines to conform to the changes discussed above or to correct typographical errors and omissions made in the publication of the proposed rules in the **Federal Register**.

Determination of Effects. The Department has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The determination that the guidelines do not constitute major rule is based on estimated annual operating costs of $30 million to $40 million for permittees and $1 million to $2.2 million for the federal government. Furthermore, no major increases in costs or prices for consumers, individual industries, government agencies, or geographic regions and no adverse effects on investment, productivity, competition, or employment are predicted to result from their implementation. The certification that the guidelines will not have any significant economic effect on a substantial number of small entities is based on the fact that they contain no special requirements for utilizing unusual or untested exploratory methods and techniques that would be costly or available only to a small set of companies and they afford small entities an opportunity to pool their financial and operational resources in applying for approval to conduct exploratory activities.

Paperwork Reduction Act. The guidelines contain provisions for collecting information that are designed to implement or facilitate performance of section 1002(e)–(h) of ANILCA. However, the information collection requirements contained in 50 CFR Part 37 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because there are fewer than 10 respondents annually.

Environmental Impact Statement. In accordance with subsection 1002(d)(2) of ANILCA, the Service prepared an Environmental Impact Statement (EIS) to accompany the guidelines and on February 23, 1983 the Service filed the final EIS with EPA, which announced its availability to the public in accordance with 40 CFR 1506.10(a) at 48 **Federal Register** 9365 on March 4, 1983. Comments received on the EIS which related to the guidelines were considered by the Task Force along with the comments addressed directly to the proposed rules in order to integrate environmental issues raised by EIS comments with environmental and other factors considered in the development of the regulations. All substantive comments on the draft EIS were responded to in the final EIS.

In addition, public comments submitted on the final EIS were reviewed and considered before the decision to adopt the regulatory approach incorporating these final rules (Alternative 3 of the EIS) was made. Copies of these comments are available from the Division of Refuge Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. None of these comments required revision of or supplement to the final EIS or guidelines. The record of decision for

the selection of Alternative 3 is being published separately as a notice also in Part IV of this issue. Copies of the final EIS may be obtained from Doug Fruge, Division of Refuges, Alaska Regional Office, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

Effective Date. These guidelines, including the provisions specifically designed to implement Section 110 of Pub. L. 97-394, take effect immediately upon their publication in the **Federal Register** because the need to accept, evaluate, modify, if necessary, and approve qualifying applications or exploration plans, and to issue permits in time to authorize preliminary field investigations and surface geological exploration to be conducted during the summer of 1983 and to enable winter seismic exploration to be conducted during the 1983-1984 field season constitutes good cause for waiving the 30-day notice normally afforded in accordance with 5 U.S.C. 553(d). The need to avoid a hiatus in the Service's regulatory program that would otherwise be created at this time, if rules were established to address the acquisition, submission and disclosure of geological and geophysical data and information, but not the use of such data and information, also constitutes good cause for giving immediate effect to the provisions designed to implement Section 110, notwithstanding the invitation of public comment found above under the discussion of 50 CFR 37.2(a). Moreover, the advance public notice of the guidelines' contents afforded by virtue of their inclusion as preliminary final regulations in Appendix A of the final EIS is thought to mitigate any hardship that might otherwise derive from this waiver of the 30-day period provided in 5 U.S.C. 553(d).

List of Subjects in 50 CFR Part 37

Alaska, Oil and gas exploration, Wildlife refuges.

For the reasons set out in the preamble, the EIS and the record of decision, and under the authorities of section 1002 of the Alaska National Interest Lands Conservation Act, 94 Stat. 2449, as amended by section 110 of Pub. L. 97-394, 96 Stat. 1982 (16 U.S.C. 3142); section 110 of Pub. L. 89-665, as added by section 206 of Pub. L. 96-515, 94 Stat. 2996 (16 U.S.C. 470h-2); section 401 of Pub. L. 148, 49 Stat. 383, as amended (16 U.S.C. 715s); 31 U.S.C. 9701; 5 U.S.C. 301; and 209 DM 6.1; 50 CFR Part 37 is added to Chapter I, Subchapter C, and established as follows.

Dated: April 4, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

PART 37—GEOLOGICAL AND GEOPHYSICAL EXPLORATION OF THE COASTAL PLAIN, ARCTIC NATIONAL WILDLIFE REFUGE, ALASKA

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Appendix I—Legal Description of the Coastal Plain, Arctic National Wildlife Refuge, Alaska.

Authority: Sec. 1002, Pub. L. 96-487, 94 Stat. 2449, as amended by Sec. 110, Pub. L. 97-394, 96 Stat. 1982 (16 U.S.C. 3142); Sec. 110, Pub. L. 89-665, as added by Sec. 206, Pub. L. 96-515, 94 Stat. 2996 (16 U.S.C. 470h-2); Sec. 401, Pub. L. 148, 49 Stat. 383, as amended (16 U.S.C. 715s); 31 U.S.C. 9701; 5 U.S.C. 301; 209 DM 6.1.

Note.—The information collection requirements contained in this part do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because there are fewer than 10 respondents annually.

Subpart A—General Provisions

§ 37.1 Purpose.

These regulations implement the requirement of section 1002(d) of the Alaska National Interest Lands Conservation Act, 94 Stat. 2450, as amended, 16 U.S.C. 3142(d), that the Secretary establish guidelines governing surface geological and geophysical exploration for oil and gas within the coastal plain of the Arctic National Wildlife Refuge. Section 1002 mandates an oil and gas exploration program for the refuge's coastal plain. The program shall culminate in a report to Congress which contains, among other things, the identification of those areas within the coastal plain that have oil and gas production potential, an estimate of the volume of oil and gas concerned, the description of the wildlife, its habitat, and other resources that are within the areas identified, and an evaluation of the adverse effects that the carrying out of further exploration for, and the development and production of, oil and gas within such areas will have on the refuge's resources. It is the objective of this program to ascertain the best possible data and information concerning the probable existence, location, volume, and potential for further exploration, development, and production of oil and gas within the coastal plain without significantly adversely affecting the wildlife, its habitat, or the environment and without unnecessary duplication of exploratory activities. These regulations prescribe the requirements and procedures for obtaining authorization for and the conduct of such exploratory activities, and for submitting to the Department the resulting data and information. These regulations also describe other matters relating to the administration of the program.

§ 37.2 Definitions.

The following definitions are applicable to the sections of this part.

(a) "Act" means section 1002 of the Alaska National Interest Lands Conservation Act, 94 Stat. 2449, as amended by section 110 of Pub. L. 97-394, 96 Stat. 1982, 16 U.S.C. 3142.

(b) "Adequate protective cover" means snow or a frostline, or both, sufficient to protect the vegetation and soil from significant adverse effects due to the operation of surface equipment, as determined by the Regional Director.

(c) "Coastal lagoons" means the waters and submerged lands between the mainland and the offshore barrier islands that lie between Brownlow Point and the Aichilik River within the coastal plain.

(d) "Coastal plain" means that area shown on the map entitled "Arctic National Wildlife Refuge", dated August

1980, and legally described in Appendix I of this Part.

(e) "Cultural resource" means any district, site, building, structure, or object significant in American history, architecture, archeology, engineering or culture, as determined in accordance with 36 CFR 60.6.

(f) "Department" means the Department of the Interior and any of its component bureaus and offices.

(g) "Director" means the Director of the U.S. Fish and Wildlife Service of his authorized representative.

(h) "Exploration plan" means the way in which a program of exploratory activities is proposed to be arranged and carried out.

(i) "Exploratory activities" means surface geological exploration or seismic exploration or both of the coastal plain and all related activities and logistics required for either or both, and any other type of geophysical exploration of the coastal plain which involves or is a component of an exploration program for the coastal plain involving surface use of refuge lands and all related activities and logistics required for such exploration.

(j) "Harass" means to pursue, hunt, take, capture, molest, collect, harm, shoot or kill or attempt to engage in any of the preceding by either intentional or negligent act or omission.

(k) "Hazardous substances" means petroleum, petroleum products, toxic materials, chemical effluent, explosives, or other materials which are likely to cause significant adverse effects to the refuge's wildlife, its habitat, the environment, or humans.

(l) "Permittee" means the person authorized by a special use permit issued pursuant to this part to conduct exploratory activities on the coastal plain; any official, employee, contractor, subcontractor or agent of the permittee or of the permittee's designee; and any participant to the permittee's permit.

(m) "Person" means any individual, partnership, firm, corporation, association, organization, or agency.

(n) "Plan of operation" means detailed procedures, covering a period not to exceed 12 months, proposed for executing an exploration plan.

(o) "Processed, analyzed and interpreted data or information" means any data or information which results from any subsequent modification, processing, analysis, or interpretation of raw data and information by human or electronic means, on or off the refuge.

(p) "Raw data and information" means all original observations and recordings in written or electronic form and samples obtained during field operations.

(q) "Refuge" means the Arctic National Wildlife Refuge.

(r) "Regional Director" means the Regional Director, Region 7 of the U.S. Fish and Wildlife Service, or his authorized representative.

(s) "Rehabilitation" means the act of returning the landform and vegetation to as near its original shape and condition as practicable, as determined by the Regional Director.

(t) "Secretary" means the Secretary of the Interior or his authorized representative.

(u) "Service" means the U.S. Fish and Wildlife Service.

(v) "Solicitor" means the Solicitor of the Department of the Interior or his authorized representative.

(w) "Special use permit" means a revocable, nonpossessory privilege issued in writing by the Regional Director and authorizing the permittee to enter and use the refuge for a specified period to conduct exploratory activities, and other activities necessary thereto.

(x) "Support facilities" means facilities on or near the refuge used to provide logistical support for the field exploratory activities.

(y) "Third party" means any person other than a representative of the permittee or the United States government.

(z) "Waste" means all material for discard from exploratory activities. It includes, but is not limited to, human waste, trash, garbage, refuse, fuel drums, shot wire, survey stakes, explosives boxes, ashes, and functional and nonfunctional equipment.

(aa) "Wildlife" means fish or wildlife or both.

§ 37.3 Other applicable laws.

(a) Nothing in this part shall be construed to relieve a permittee or any person from complying with any applicable federal laws or any applicable state and local laws, the requirements of which are not inconsistent with this part.

(b) Until the litigation between the United States and the State of Alaska over title to the submerged lands of the coastal lagoons, "United States v. Alaska", Sup. Ct., No. 84, Orig. (1979), is resolved, the permittee shall satisfy both federal and state requirements for conducting oil and gas exploration in the coastal lagoons. In the event of an inconsistency between such requirements the permittee shall satisfy that requirement which provides the greatest environmental protection.

§ 37.4 Disclaimer and disqualification.

(a) Authorization granted under this part to conduct exploratory activities shall not confer a right to any discovered oil, gas, or other mineral in any manner.

(b) Any person who obtains access pursuant to § 37.54 to data and information obtained as a result of carrying out exploratory activities shall be disqualified from obtaining or participating in any lease of the oil and gas to which such data and information pertain. Any person who obtains access to data and information obtained as a result of carrying out exploratory activities from any person other than the permittee who obtained such data and information shall be disqualified from obtaining or participating in any lease of the oil and gas to which such data and information pertain.

Subpart B—General Requirements

§ 37.11 General standards for exploratory activities.

(a) No exploratory activities shall be conducted without a special use permit. Requirements and procedures for obtaining a special use permit are prescribed in §§ 37.21 through 37.23.

(b) Exploratory activities shall be conducted so that they do not:

(1) Significantly adversely affect the refuge's wildlife, its habitat, or the environment;

(2) Unnecessarily duplicate exploratory activities of the permittee or another permittee; and

(3) Unreasonably or significantly interfere with another permittee's activities.

(c) Reexamination of an area may be permitted by the Regional Director if necessary to correct data deficiencies or to refine or improve data or information already gathered.

(d) Drilling of exploratory wells is prohibited.

§ 37.12 Responsibilities of permittee.

(a) The permittee shall comply and shall be responsible for the compliance of its officials, employees, contractors, subcontractors and agents with the regulations of this part, the terms and conditions of its special use permit, the provisions of its approved exploration plan and plan or operation, and all reasonable stipulations, demands and orders issued by the Regional Director. All actions by the permittee inconsistent with this part are prohibited.

(b) The permittee shall designate a general representative who shall be the person primarily accountable for managing the permittee's authorized activities, and a field representative who shall be the person primarily accountable for supervising the

permittee's field operations, and their alternates. The Regional Director shall be informed of the names, addresses, and telephone numbers of the persons designated pursuant to this paragraph and of the procedures for contacting them on a 24-hour basis, including the radio frequency for field operations, at the time the permittee submits its first plan of operation pursuant to § 37.24. The permittee shall notify the Regional Director promptly of any changes in such personnel or the procedures for contacting them.

(c) Field operations shall be conducted by the permittee or a designee approved by the Regional Director. Assignment of a designee shall be in a manner and form acceptable to the Regional Director. The Regional Director shall approve or disapprove a permittee's designee within 30 days following the receipt of such information as the Regional Director may require from the permittee and designee in order to reach his decision. Acceptance of a designee to act for the permittee in matters relating to the conduct of exploratory activities does not relieve the permittee of responsibility for compliance with applicable laws, its special use permit, exploration plan, plan of operation, and all reasonable stipulations, demands and orders of the Regional Director. The designee will be considered the agent of the permittee and will be responsible for complying fully with the obligations of the permittee. The serving of stipulations, demands, orders, and notices on the permittee's designee, when delivered personally or by radio or mail, will be deemed to be service upon the permittee. The permittee shall notify the Regional Director in writing when assignment of a designee has been cancelled. A designee cannot reassign its designation to another party. The permittee or designee shall notify the Regional Director 10 working days in advance of its intention to commence field operations for each season that it conducts exploratory activities.

(d) The permittee shall submit to the Regional Director 30 days prior to the commencement of field operations for each year covered by its exploration plan an updated list of the names and addresses of all persons participating in the exploratory activities covered thereby or sharing in the data and information resulting therefrom through a cost-sharing or any other arrangement.

(e) The permittee shall perform operations and maintain equipment in a safe and workmanlike manner. The permittee shall take all reasonable precautions necessary to provide adequate protection for the health and safety of life and the protection of property and to comply with any health and safety requirements prescribed by the Regional Director.

§ 37.13 Group participation.

(a) To avoid unnecessary duplication of exploratory activities, the permittee shall, if ordered by the Regional Director, afford all interested persons, through a signed agreement, an opportunity to participate in its exploratory activities. Within 60 days following such order, the permittee shall provide evidence satisfactory to the Regional Director of its compliance therewith. The permittee shall provide the Regional Director with the names and addresses of all additional participants, as they join.

(b) If, with the approval of the Regional Director, the permittee at any time changes any provisions of its approved exploration plan relating to areal extent, intensity of exploratory activities, or logistical support, and the Regional Director determines such changes to be significant, the Regional Director may require the permittee to afford all interested persons another opportunity to participate in the permitted exploratory activities in accordance with paragraph (a) of this section.

(c) The requirements of this section do not preclude the permittee from initiating field operations as authorized under its special use permit.

(d) All participants shall be bound by the regulations of this part, the permittee's special use permit, approved exploration plan and plan of operation and any reasonable stipulations, demands and orders issued by the Regional Director.

§ 37.14 Bonding.

(a) Before the issuance of its special use permit, any applicant whose exploration plan has been approved under § 37.22 shall furnish to the Service a surety bond of not less than $100,000, or other security satisfactory to the Service, to secure performance of its exploration plan and plan(s) of operation and compliance with the permit and this part. Such surety bond shall be issued by qualified surety companies approved by the Department of the Treasury (see Department of the Treasury Circular No. 570). Such bond shall be maintained by the permittee for the benefit of the Service until the Regional Director notifies the permittee in writing that all terms and conditions of its exploration plan, special use permit, plan of operation, and this part have been met or otherwise consents to its cancellation or termination. Any bond furnished or maintained by a person under this section shall be on a form approved or prescribed by the Regional Director. The Regional Director may require an increase in the amount of any bond or other security to be furnished and any outstanding bond or security or require a new bond or security whenever additional coverage is needed to secure performance of its exploration plan and plan(s) of operation and compliance with the permit and this part or is needed as a consequence of default.

(b) Whenever a permittee's exploration plan, plan of operation, or special use permit is revised or modified, the permittee shall provide to the Regional Director within 30 days thereafter an acknowledgement by the surety that its bond continues to apply to the exploration plan, plan of operation or special use permit, as revised or modified, unless a waiver of notice to the surety is contained in the bond or the surety is not otherwise released by the revision or modification, or unless the permittee provides to the Service an increased or additional bond.

(c) Recovery of the amount specified in the permittee's bond or other security shall not preclude the Department from seeking specific performance by the permittee of any obligations not satisfied by enforcement of the bond or security, or compensation for any damages, losses or costs due to the permittee's activities which exceed the amount recovered, by pursuing the Department's legal remedies.

Subpart C—Exploration Plans

§ 37.21 Application requirements.

(a) Prior to submitting an exploration plan, applicants may meet with the Regional Director to discuss their proposed plans and exploratory activities and the requirements of this part.

(b) Any person wanting to conduct exploratory activities may apply for a special use permit by submitting for approval one or more written exploration plans, in triplicate, to the Regional Director, Region 7, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503. To be considered, exploration plans covering the period from the inception of the program through May 31, 1986 or any portions thereof must be received by the Regional Director during normal business hours on May 20, 1983 and exploration plans covering the period from October 1, 1984 through May 31, 1986 or any portions thereof must be

received by the Regional Director during normal business hours on March 1, 1984.

(c) In addition to containing the information required in paragraph (d) of this section, any exploration plan submitted shall describe the applicant's plan for carrying out an integrated program of exploratory activities in such a manner as will satisfy the objective and limitations stated in § 37.1. If an applicant submits an exploration plan on May 20, 1983 with the intention of submitting another exploration plan on March 1, 1984, the applicant shall describe in its initial plan how its future exploratory activities will be integrated with those proposed under its initial plan. Any applicant submitting an exploration plan on May 20, 1983 which incorporates preliminary field investigations and/or surface geological exploration proposed to commence before August 1, 1983 may submit a written request to the Regional Director for an expedited review and approval of that portion of the exploration plan covering such preliminary investigations and/or exploration. Each exploration plan submitted must be published and be the subject of a public hearing in accordance with requirements of § 37.22(b).

(d) An exploration plan shall set forth in general terms such information as is required by this part and by the Regional Director in determining whether the plan is consistent with this part, including, but not limited to:

(1) The name and address of any person who will conduct the proposed exploratory activities, i.e., the applicant/permittee, and, if that person is an agency, firm, corporation, organization, or association, the names and addresses of the responsible officials, or, if a partnership, the names and addresses of all partners;

(2) The names and addresses of all persons planning at the time of plan submittal to participate in the proposed exploratory activities or share in the data and information resulting therefrom through a cost-sharing or any other arrangement;

(3) Evidence of the applicant's technical and financial ability to conduct integrated and well designed exploratory activities in an arctic or subarctic environment and of the applicant's responsibility in complying with any exploration permits previously held by it;

(4) A map at a scale of 1:250,000 of the geographic areas in which exploratory activities are proposed and of the approximate locations of the applicant's proposed geophysical survey lines, travel routes to and within the refuge, fuel caches, and major support facilities;

(5) A general description of the type of exploratory activities planned, including alternate exploratory methods and techniques if proposed, and the manner and sequence in which such activities will be conducted;

(6) A description of how various exploratory methods and techniques will be utilized in an integrated fashion to avoid unnecessary duplication of the applicant's own work;

(7) A schedule for the exploratory activities proposed, including the approximate dates on which the various types of exploratory activities are proposed to be commenced and completed;

(8) A description of the applicant's proposed communication techniques;

(9) A description of the equipment, support facilities, methods of access and personnel that will be used in carrying out exploratory activities;

(10) A hazardous substances control and contingency plan describing actions to be taken to use, store, control, clean up, and dispose of these materials in the event of a spill or accident;

(11) A general description of the anticipated impacts that the proposed exploratory activities may have on the refuge's wildlife, its habitat, the environment, subsistence uses and needs, and cultural resources, and a description of mitigating measures which will be implemented to minimize or avoid such impacts;

(12) A description of the proposed procedures for monitoring the environmental impacts of its operation and its compliance with all regulatory and permit requirements;

(13) A statement that, if authorized to conduct exploratory activities, the applicant shall comply with this part, its special use permit, its approved exploration plan, plan of operation, and all reasonable stipulations, demands and orders issued by the Regional Director;

(14) A description of the applicant's proposed data quality assurance and control program; and

(15) Such other pertinent information as the Regional Director may reasonably require.

§ 37.22 Approval of exploration plan.

(a) An exploration plan shall be approved by the Regional Director if he determines that it satisfies the requirements of §§ 37.21(c) and 37.21(d) and is otherwise consistent with the Act and the regulations of this part. In order to meet the objective and limitations stated in § 37.1, enforce the standards stated in § 37.11(b), or minimize adverse impacts on subsistence uses, the Regional Director may approve or disapprove any exploration plan in whole or in part or may require, as a condition of approval, an applicant to conduct its exploratory activities in an assigned area or jointly with other applicants or to make such modification in its exploration plan as he considers necessary and appropriate to make it consistent with this part. No plan shall be approved if the applicant submitting it does not demonstrate to the reasonable satisfaction of the Regional Director its adequate technical and financial ability to conduct integrated and well designed exploratory activities in an arctic or subarctic environment, and a history of responsible compliance with any exploration permits that it or its responsible officials or partners may have previously held.

(b) Upon receipt of an exploration plan submitted in accordance with § 37.21(b), the Regional Director shall promptly publish notice of the application and text of the plan in the **Federal Register** and newspapers of general circulation in the State of Alaska. The Regional Director shall determine within 90 days after the plan is submitted whether the plan is consistent with this part. The Regional Director may extend this 90-day period for up to 30 additional days upon written notice to the applicant. Before making his determination, the Regional Director shall hold at least one public hearing in the State for the purpose of receiving public comments on the plan and may confer with the applicant whenever he deems it necessary. The Regional Director shall give the applicant written notice of his determination.

(c) Whenever the Regional Director disapproves an exploration plan in whole or in part, he shall notify the applicant in writing of the reasons for his disapproval. The applicant may request the Director to consider that which was disapproved by the Regional Director by filing a written request with the Director, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, within 30 days from the date of disapproval. Such a request shall not operate to stay the Regional Director's disapproval. The request shall:

(1) State fully the basis for the applicant's disagreement with the Regional Director's determination;

(2) Include any statement or documentation, in addition to that already submitted by the applicant with its application, which demonstrates that the applicant's exploration plan is consistent with this part; and

(3) Indicate whether or not the applicant requests an informal hearing before the Director.

The Director shall provide an informal hearing if requested by the applicant. Within 30 days of the receipt of the applicant's request for reconsideration or of the applicant's hearing, if any, whichever is later, the Director shall affirm, reverse, or modify the Regional Director's determination. Written notice of the Director's decision and the reasons therefor shall be provided promptly to the applicant. The Director's decision shall constitute the final administrative decision of the Secretary in the matter. Nothing in this part shall be construed to deprive the Secretary or the Assistant Secretary for Fish and Wildlife and Parks of the authority to take jurisdiction at any stage of any appeal or request for reconsideration and render the final decision in the matter after holding any informal hearing that may be required, to review any decision of the Regional Director or Director, or to direct the Regional Director or Director to reconsider a decision.

(d) The Regional Director, as a condition of approval of any exploration plan under this section, shall:

(1) Require that all data and information (including processed, analyzed and interpreted information) obtained as a result of carrying out the plan shall be submitted to the Regional Director, as provided in § 37.53;

(2) Make such data and information available to the public, except that any processed, analyzed and interpreted data or information shall be held confidential by the Department for a period of not less than 10 years following the submission of such data or information to the Regional Director or 2 years following any lease sale including the area within the refuge from which the information was obtained, whichever period is longer, as provided in § 37.54; and

(3) Require that all raw data and information obtained as a result of carrying out the plan shall be made available by the permittee to any person at fair cost.

(e) In the course of evaluating an exploration plan, the Regional Director shall also evaluate the effect of the proposed exploratory activities on subsistence uses and needs, the availability for exploration of alternate areas within the coastal plain, and alternatives to the proposed activities which would reduce or eliminate the use of areas within the coastal plain needed for subsistence purposes. If the Regional Director finds that the exploration plan, if approved, would significantly restrict subsistence uses, he shall satisfy the requirement to hold a hearing on this isssue by incorporating it in any hearing held pursuant to paragraph (b) of this section and shall otherwise satisfy the procedural requirements of section 810(a) of the Alaska National Interest Lands Conservation Act, 94 Stat. 2427, 16 U.S.C. 3120, before approving the plan.

§ 37.23 Special use permit.

(a) Within 45 days, or sooner if practicable, of approving an exploration plan, or portion thereof, the Regional Director shall, unless prohibited by law, issue a special use permit to authorize the permittee to proceed with those exploratory activities described and approved in its exploration plan, or portion thereof, provided that the requirements of § 37.14(a) have been satisfied. The special use permit may contain such terms and conditions and may be amended from time to time as the Regional Director deems necessary and appropriate to carry out the Act and this part.

(b) Before issuing a special use permit to authorize exploration of lands within the coastal plain allotted pursuant to the Act of May 17, 1906, 34 Stat. 197, as amended by the Act of August 2, 1956, 70 Stat. 954, or on lands within the coastal plain the surface estate in which has been selected by or conveyed to the Kaktovik Inupiat Corporation pursuant to Sections 12 and 14 of the Alaska Native Claims Settlement Act, 85 Stat. 701 and 702, 43 U.S.C. 1611 and 1613, the Regional Director shall seek the views of the holder of such approved native allotment or the Corporation for the purpose of developing permit conditions designed to mitigate the effects of such exploration on its interests.

§ 37.24 Plan of operation.

Each approved exploration plan shall be supplemented by a written plan of operation for each fiscal year, or portions thereof, covered by the exploration plan. Each plan of operation shall specify the field operations for implementing that exploration plan during the year, or portions thereof, covered by the plan of operation. Each plan of operation shall be submitted to the Regional Director at least 30 days before field operations are to be commenced thereunder, except that any plan of operation supplementing a portion of an exploration plan that received expedited review and approval pursuant to § 37.21(c) shall be submitted 10 days before field operations are to be commenced thereunder. A plan of operation shall set forth such specific information as is required by the Regional Director in determining whether the plan is consistent with the exploration plan to which it pertains and with this part. The permittee shall make such modifications in its plan of operation as are deemed at any time by the Regional Director to be necessary and appropriate to ensure such consistency. Reconsideration of the Regional Director's actions under this section may be obtained by employing the procedures described in § 37.22(c).

§ 37.25 Revision.

(a) A permittee may request the Regional Director for permission to revise its approved exploration plan. Until the Regional Director grants the permittee's request, no revision of its exploration plan shall be implemented. Such request shall be deemed to be granted on the 10th working day following its receipt unless the Regional Director denies the request; advises the permittee that the proposed revision is major and, therefore, must satisfy the publication and hearing requirements of § 37.22(b) before it can be acted upon; by timely written notice extends the period for considering the request; conditionally approves the proposed revision with such modifications as he stipulates are necessary and appropriate; or, unconditionally approves the proposed revision within a shorter period. No revision of an exploration plan shall be approved that is inconsistent with the Act or this part. Approval of any revision is subject to the conditions stated in § 37.22(d) to the extent that they are pertinent.

(b) Upon 10 working days advance notice to the Regional Director of its proposed revision, or within such lesser period as may be concurred in by the Regional Director, a permittee may implement a revision of its plan of operation, provided that such revision is consistent with the exploration plan to which the plan of operation pertains and this part. The Regional Director may require the permittee to defer, modify, or rescind such revision whenever he determines that such action is necessary and appropriate to ensure such consistency.

(c) Reconsideration of the Regional Director's actions under this section may be obtained by employing the procedures described in § 37.22(c). A request for reconsideration shall not operate to stay the Regional Director's actions unless such stay is granted in writing by the Director.

Subpart D—Environmental Protection

§ 37.31 Environmental protection.

(a) The permittee shall conduct operations in a manner which avoids significant adverse effects on the refuge's wildlife, its habitat, and environment. The Regional Director may impose stipulations to supplement the permittee's special use permit and issue other orders as needed to ensure that the permittee's activities are conducted in a manner consistent with this part. If, after 30 days, or in emergencies such shorter periods as shall not be unreasonable, following a demand by the Regional Director, the permittee shall fail or refuse to perform any action required by this part, its exploration plan, plan of operation, special use permit, or a stipulation or order of the Refuge Manager, the department shall have the right, but not the obligation, to perform any or all such actions at the sole expense of the permittee. Prior to making such demand, the Regional Director shall confer with the permittee, if practicable to do so, regarding the required action or actions included in the demand. Reconsideration of the Regional Director's demands under this section may be obtained by employing the procedures described in § 37.22(c). A request for reconsideration shall not operate to stay the Regional Director's demands or the Department's performance pursuant to this section unless such stay is granted in writing by the Director.

(b) *Terrestrial environment.* (1) Vehicles shall be operated in a manner such that the vegetative mat or soil is not significantly damaged or displaced. Blading of snow on trails or campsites shall be limited so as to maintain an adequate protective cover.

(2) Ground vehicles shall be of the type causing the least practicable harm to the surface, such as Nodwell FN–110 or FN–60 or Bombardier track vehicles, mobile camps on flexible tracks or skids, vibrator units on flexible tracks or wheels, D–7 Caterpillar tractors, or their equivalent. They shall be operated only in the winter and where there is adequate protective cover. Vehicle operation shall cease in the spring when the Regional Director determines that the protective cover is no longer adequate. Operation of ground vehicles in the summer is prohibited.

(3) Movement of equipment through riparian willow stands shall be avoided, except when approved by the Regional Director.

(4) Above ground explosive charges shall be utilized in a manner to minimize damage to the vegetative mat.

(5) Campsites may be located on lakes which are frozen throughout, including botton sediments, on durable ground, and on lagoons which are frozen to sufficient depth to ensure safety of personnel, but shall not be located on river ice. Durable ground can include gravel or sand bars or vegetated ground with adequate protective cover.

(6) Campsites and trails shall be kept clean of waste.

(7) Gray water may be discharged to the surface provided it is filtered, disinfected, and not discharged directly into lakes and rivers.

(8) The permittee shall take all precautionary measures necessary to prevent and suppress man-caused tundra fires and shall notify the Regional Director of the occurrence of any tundra fires immediately or as soon as communication can be established.

(9) Rehabilitation of disturbed surface areas shall be accomplished by the permittee in accordance with schedules and a plan required and approved by the Regional Director. Revegetation shall be accomplished exclusively with endemic species.

(10) The permittee shall not harass wildlife in any manner, including, but not limited to, close approach by surface vehicles or aircraft. Aircraft should maintain an altitude of at least 1500 feet above ground level whenever practicable.

(11) No explosives shall be detonated within ⅛ miles of any known denning brown or polar bear or any muskoxen or caribou herd.

(12) The permittee shall operate in such a manner as not to impede or restrict the free passage and movement of large mammals, including caribou, muskoxen, moose, polar bear, and brown bear.

(13) Feeding of wildlife is prohibited. This includes the leaving of garbage or edibles in a place which would attract wildlife. Garbage shall be kept in covered animal-proof containers while awaiting incineration.

(14) Hunting, fishing, and trapping by the permittee within the refuge are prohibited during the conduct of exploratory activities. Employing firearms in defense of life and property is allowed.

(c) *Aquatic environment.* (1) The permittee shall not significantly alter the banks of streams, rivers, or lakes while conducting exploratory activities. Crossings of stream, river, or lake banks shall utilize a low angle approach or, if appropriate, snow bridges. If snow bridges are utilized for bank protection they shall be free of dirt and debris and shall be removed after use or prior to breakup each year, whichever occurs first.

(2) No water shall be removed from any subsurface source. Removal of water or snow cover from or compaction of snow cover on streams, rivers or lakes identified by the Regional Director as inhabited by fish shall be prohibited during the winter.

(3) To protect fish and other aquatic fauna, high explosives shall not be detonated within, beneath, on or in close proximity to fish-bearing waters unless prior drilling indicates that the water body, including its substrate, is solidly frozen. The minimum acceptable offset from fishing-bearing waters for various size charges is:

1 pound charge—50 feet
2 pound charge—75 feet
5 pound charge—125 feet
10 pound charge—150 feet
25 pound charge—250 feet
100 pound charge—500 feet

Use of a charge in excess of 100 pounds shall be approved by the Regional Director and shall be in a manner prescribed or approved by him.

(4) All operations shall be conducted in a manner that will not impede the passage of fish, disrupt fish spawning, overwintering or nursery areas identified by the Regional Director or block or change the character or course of, or cause significant siltation or pollution of any stream, river, pond, pothole, lake, lagoon, or drainage system.

(5) Ground vehicles shall not cross active spring areas.

(d) *Cultural resources.* (1) Prior to implementing any plan of operation, the permittee shall obtain from the Regional Director copies of the cultural resource reconnaissance reports, maps and other available documents which identify all known cultural resource sites and areas of predicted high probability of containing cultural resources. The Regional Director may reasonably restrict or prohibit exploratory activities in these areas and, in accordance with 36 CFR Part 800, thereby mitigate, minimize or avoid any adverse effects thereon.

(2) Unless otherwise specified by the Regional Director, the following prohibitions shall be in effect:

(i) No vehicle of any type shall pass over or through a known cultural resource site with standing structures; and

(ii) No seismic train shall camp on a known cultural resource site.

(3) If any exploratory activities require entry into areas known to contain historic or archeological resources, high probability areas, or

areas previously unsurveyed for cultural resources, prior to the initiation of such activities, the permittee shall, if ordered by the Regional Director, locate, identify and evaluate properties eligible for listing on the National Register of Historic Places, recover for the Department historic and archeological data contained in such properties, and take other measures, as directed by the Regional Director, designed to mitigate, minimize or avoid to the extent practicable any significant adverse effects on them. Such efforts shall be done in a manner prescribed or approved by the Regional Director in accordance with a programmatic memorandum of agreement among the Service, the State Historic Preservation Officer and the Advisory Council on Historic Preservation, and without expense or liability to the Department.

(e) *General.* (1) All spills or leakages of any hazardous substances, fires, fatalities, and any other conditions which threaten the refuge's resources, the environment, or human safety, shall be reported by the permittee to the Regional Director immediately or as soon as communication can be established. Other notifications shall be made by the permittee as required by applicable laws.

(2) All combustible solid waste shall be incinerated or returned to the permittee's base of operations for disposal in accordance with applicable federal, state and local standards. All non-combustible solid waste, including, but not limited to, fuel drums and shot wire, shall be returned to the permittee's base of operations for disposal in accordance with applicable federal, state and local standards.

(3) No discharge of petroleum, petroleum products, or toxic materials shall be made within the refuge. All hazardous subtances utilized and/or generated in conducting exploratory activities shall be contained, controlled, and cleaned up in accordance with the permittee's approved hazardous substances control and contingency plan. Such measures shall take precedence over all other matters except human safety.

(4) Unless exigencies warrant, in any field operations employing surface geological exploration, the equipment, facilities, and personnel used within the coastal plain shall not exceed that necessary to support a maximum of 6 simultaneously operating surface geological survey crews, and in any field operations employing seismic exploration methods, the equipment, facilities, and personnel used within the coastal plain shall not exceed that necessary to support a maximum of 6 simultaneously operating seismic survey crews.

(5) No fuel storage facilities shall be placed within the annual floodplain of fish-bearing watercourses or within 100 feet of any other water body, and no vehicle refueling shall occur within such areas except when approved by the Regional Director. All fuel storage sites shall be approved by the Regional Director. Fuel containers shall be properly stored and marked with the permittee's name, type of fuel, and last date of filling. All fuel containers with a storage capacity greater than 55 gallons shall be of double-wall construction. All fuels containers, including those emptied, shall be capped when not in actual use. All fuel containers placed within the annual floodplain of fish-bearing watercourses shall be removed prior to breakup.

(6) The permittee shall not disturb or damage any geodetic land survey monuments. If any monument is disturbed or damaged, the permittee shall reestablish it in a manner acceptable to the Regional Director.

(7) The timing and location of the detonation of explosives shall be approved in advance by the Regional Director.

(8) No permanent structures or facilities will be erected within the coastal plain. The type and location of temporary structures and facilities including, but not limited to, ice airstrips, for use in support of exploratory activities must be approved by the Regional Director.

§ 37.32 Special areas.

(a) *Caribou Calving and Post-Calving Special Areas.* The Regional Director shall designate within the coastal plain specific caribou calving and post-calving special areas which shall be closed to all exploratory activities for such periods between May 10 and July 15 of each year as those areas are determined by the Regional Director to be used for caribou calving and post-calving or both so as to ensure that exploratory activities do not significantly adversely affect calving and post-calving caribou. No exploratory activities shall be conducted in such designated areas during such periods.

(b) *Muskoxen Calving Special Areas.* Whenever he deems it necessary or appropriate to ensure that exploratory activities do not significantly adversely affect calving muskoxen, the Regional Director shall designate within the following areas specific areas which shall be closed to all exploratory activities for such periods between April 15 and June 5 of each year as those areas are determined by the Regional Director to be used for muskoxen calving. No exploratory activities shall be conducted in such designated areas during such periods.

(1) One generally encompassing the Tamayariak uplands bordered on the east by the Tamayariak River, on the northwest by the Canning River, on the east by a north-south line intersecting the benchmark "Can", and on the south by an east-west line also intersecting the benchmark "Can".

(2) One generally encompassing the Carter Creek uplands, bordered on the east by the Sadlerochit River, on the north by the mainland coastline, on the west by Carter Creek, and on the south by an east-west line approximately six miles inland from the coastline.

(3) One generally encompassing the Niguanak hills, bordered on the east by the Angun River, on the north by the mainland coastline, on the west by a line parallel to and two miles west of the Niguanak River, crossing portions of the Okerokovik River, and extending south to the southern boundary of the coastal plain, and on the south by the southern boundary of the coastal plain.

(c) *Brown Bear and Polar Bear Denning Special Areas.* Whenever he deems it necessary or appropriate to ensure that exploratory activities do not significantly adversely affect denning bears, the Regional Director shall designate within the coastal plain brown bear and polar bear denning sites within ½ mile of which all exploratory activities shall be prohibited for such periods between October 1 of one year and April 30 of the following year as are prescribed by the Regional Director.

(d) *Snow Goose Staging Special Areas.* Whenever he deems it necessary or appropriate to ensure that exploratory activities do not significantly adversely affect staging snow geese, the Regional Director shall designate within the general area bordered on the east by the Aichilik River, on the north by the mainland coastline, on the west by the Hulahula River, and on the south by the southern boundary of the coastal plain, specific snow goose staging special areas which shall be closed to all exploratory activities during such periods between August 20 and September 10 of each year as those areas are determined by the Regional Director to be used for snow goose staging. No exploratory activities shall be conducted in such designated areas during such periods.

(e) In addition, the Regional Director may designate specific areas within the coastal plain that are important for other wildlife or that encompass lands the surface estate in which is owned by

holders of approved native allotments or the Kaktovik Inupiat Corporation as special areas in which exploratory activities may be prohibited, conditioned or otherwise restricted in such manner and for such period as prescribed by the Regional Director to avoid significant adverse effects from exploratory activities.

(f) The Regional Director shall notify the permittee of the locations of designated special areas and of the applicable limitations on its exploratory activities as far in advance of the effective dates of such limitations as is possible. The Regional Director may modify or remove such designations and limitations whenever he determines that they are no longer necessary to protect the resources or values of such special areas from significant adverse effects.

(g) No exploratory activities shall be conducted by any permittee at any time within ½ mile of the source of the Sadleochit Spring or within ¼ mile on either side of Sadlerochit Spring Creek for a distance of 5 miles downstream from its source.

§ 37.33 Environmental briefing.

The permittee shall provide opportunities for the Regional Director to conduct environmental and other pertinent briefings for all of its personnel involved in field operations prior to commencement of field work and periodically thereafter as the Regional Director may determine. The permittee shall require the attendance of its personnel and arrange the time and place for such briefings upon the request of the Regional Director. In addition, the permittee shall provide a copy of this part to each employee involved with its exploratory activities.

Subpart E—General Administration

§ 37.41 Responsibilities of the Regional Director.

The Regional Director is authorized to approve and disapprove exploration plans; issue special use permits; inspect and regulate exploratory activities; require compliance with the permittee's approved exploration plan, plan of operation, this part, and other statutes and regulations under which the refuge is administered; and perform all other duties assigned to the Regional Director by this part. The Regional Director may issue written or oral stipulations, demands and orders to carry out his responsibilities, and amend and terminate them as he deems appropriate. Any oral stipulation, demand or order shall be confirmed in writing within 3 working days from its issuance.

§ 37.42 Inspection and monitoring.

The Regional Director may designate field representatives, hereinafter known as Field Monitors, to monitor the exploratory activities in the field. A Field Monitor may exercise such authority of the Regional Director as is provided by delegation, except that a Field Monitor may not revoke a permittee's special use permit, and provided that any order issued by a Field Monitor which suspends all of a permittee's field activities shall, except in emergencies, require the concurrence of the Regional Director. The Regional Director shall have a continuing right of access to any part of the exploratory activities at any time for inspection or monitoring and for any other purpose that is consistent with this part. A permittee, upon request by the Regional Director, shall furnish lodging, food, and reasonable use of its communication and surface and air transportation systems, to the Field Monitors and other representatives of the United States for the purposes of inspecting and monitoring the permittee's exploration activities in the field and for any other purpose consistent with this part. Whenever possible, the Regional Director shall give advance notice of the need for such services and facilities, including the names of persons to be accommodated.

§ 37.43 Suspension and modification.

If at any time while exploratory activities are being carried out under an approved exploration plan and special use permit, the Regional Director, on the basis of information available to him, determines that continuation of further activities under the plan or permit will significantly adversely affect the refuge's wildlife, its habitat, or the environment, or significantly restrict subsistence uses, or that the permittee has failed to comply with its approved exploration plan, plan of operation, special use permit, any reasonable stipulation, demand or order of the Regional Director, or any regulation of this part, the Regional Director may, without any expense or liability to the Department, suspend activities under the plan and/or permit for such time, or make such modifications to the plan and/or permit, or both suspend and so modify, as he determines necessary and appropriate. Such suspensions shall state the reasons therefore and be effective immediately upon receipt of the notice. Suspensions issued orally shall be followed by a written notice confirming the action within 3 days, and all written notices will be sent by messenger or registered mail, return receipt requested. A suspension shall remain in effect until the basis for the suspension has been corrected to the satisfaction of the Regional Director. For good cause, the Regional Director may also grant at the permittee's request, a written waiver of any provision of its special use permit, so long as such waiver will not be likely to result in significant adverse effects on the refuge's resources. Reconsideration of the Regional Director's actions under this section may be obtained by employing the procedures described in Section 37.22(c). A request for reconsideration shall not operate to stay the Regional Director's actions unless such stay is granted in writing by the Director.

§ 37.44 Revocation and relinquishment.

For nonuse, for failure to comply with Section 37.14, or for any action of the permittee not consistent with this part, the Regional Director may revoke or a permittee may relinquish a special use permit to conduct exploratory activities at any time by sending to the other a written notice of revocation or relinquishment. Such notice shall state the reasons for the revocation or relinquishment and shall be sent by registered mail, return receipt requested, at least 30 days in advance of the date that the revocation or relinquishment will be effective. Revocation or relinquishment of a permit to conduct exploratory activities shall not relieve the permittee of the obligation to comply with all other obligations specified in this part and in its special use permit, approved exploration plan and plan of operation. Reconsideration of the Regional Director's actions under this section may be obtained by employing the procedures described in Section 37.22(c). A request for reconsideration shall not operate to stay the Regional Director actions unless such stay is granted in writing by the Director.

§ 37.45 Exploration by the U.S. Geological Survey.

Notwithstanding the requirement found in § 37.21(b) on when exploration plans shall be submitted, the U.S. Geological Survey may at any time apply for a special use permit to conduct exploratory activities by submitting for approval one or more exploration plans in accordance with the requirements of this part and the Act. No plan submitted by the Survey will be approved unless (1) no other person has submitted a plan for the area involved which satisfies the regulations of this part and (2) the information which would be obtained from the Survey is needed to make an adequate report to Congress pursuant to

the Act. Sections 37.13, 37.14, 37.22(d)(3), 37.46, 37.47, and 37.54(d) and the provisions of §§ 37.22(d)(2), 37.53(e), and 37.54 on processed, analyzed and interpreted data or information shall not apply to the Survey. If authorized to conduct exploratory activities, the Survey shall comply with this part in all other respects. All contractors and subcontractors used by the Survey to conduct exploratory activities shall be subject to all of the regulations of this part excepting §§ 37.13 and 37.46 and the provisions of §§ 37.22(d)(2), 37.53(e), and 37.54 on processed, analyzed and interpreted data or information.

§ 37.46 Cost reimbursement.

(a) Each applicant for or holder of a special use permit issued under this part shall reimburse the Department for its actual costs incurred, including, but not limited to, its direct costs and indirect costs as established by the indirect cost rate of the charging bureau or office, in publishing, reviewing (which includes, but is not limited to, conducting any public hearings thereon), modifying, and approving or disapproving the applicant's or permittee's exploration plan(s); reviewing evidence of the permittee's compliance with any order given by the Regional Director under § 37.13; preparing and issuing the permittee's special use permit; reviewing and acting on the permittee's plan(s) of operation; inspecting, monitoring, and enforcing the permittee's compliance with its approved exploration plan(s), plan(s) or operation, special use permit and this part; performing the permittee's obligations pursuant to § 37.31(a); and identifying, evaluating and preserving historic, archeological and cultural resources in areas to be explored by the permittee; as further delineated by the Regional Director.

(b) Each applicant shall submit with each exploration plan submitted a payment, the amount of which shall be an estimate made by the Regional Director of the costs which will be incurred by the Department in publishing, reviewing, modifying and approving or disapproving the applicant's exploration plan.

(1) If the applicant's plan is disapproved or if the applicant withdraws its application before a decision is reached on its plan, the applicant shall be responsible for such costs incurred by the Department in processing the applicant's application up to the date on which the plan is disapproved or the Regional Director receives written notice of the applicant's withdrawal, and for costs subsequently incurred by the Department in terminating the application review process. If the costs actually incurred exceed the estimate paid at the time of application, reimbursement by the applicant of such additional costs shall be due within 30 days of receiving notice from the Regional Director of the additional amount due. If the actual costs incurred are less than the estimate paid by the applicant, the excess shall be refunded to the applicant.

(2) If the applicant's plan is approved, the applicant shall pay an estimate made by the Regional Director of the costs which will be incurred by the Department in preparing and issuing to the applicant a special use permit. The first quarterly payment made by the applicant pursuant to paragraph (c) of this section will be adjusted upward or downward, as warranted, to accurately reflect the actual costs incurred by the Department in processing the permit. If an applicant withdraws after its plan is approved, but before its special use permit is issued, the applicant shall be responsible for such costs incurred by the Department in preparing the applicant's permit up to the date on which the Regional Director receives written notice of the applicant's withdrawal and for costs subsequently incurred by the Department in terminating permit preparation and issuance.

(3) When two or more applications are filed which the Regional Director determines to be in competition with each other, each applicant shall reimburse the Department for such actual costs incurred in processing its exploration plan and special use permit, if issued, except that those costs which are not readily identifiable with one of the applicants, shall be paid by each of the applicants in equal shares.

(c) Upon issuance of a special use permit, the permittee shall make an initial advance payment covering that current fiscal year quarter and quarterly payments thereafter to cover the actual costs incurred by the Department in administering the permittee's permit for its duration. Such costs shall include, but are not limited to, those direct costs and indirect costs, as established by the indirect costs rate of the charging bureau or office, incurred in reviewing and acting on permittee's plan(s) of operation; reviewing evidence of the permittee's compliance with any order given by the Regional Director under § 37.13; preparing and issuing the permittee's special use permit; inspecting monitoring, and enforcing the permittee's compliance with its approved exploration plan, plan(s) of operation, special use permit and this part; performing the permittee's obligations pursuant to § 37.31(a); and identifying, evaluating and preserving historic, archeological and cultural resources in areas to be explored by the permittee. Each quarterly payment will be paid at the outset of the quarter and will cover the estimated cost of that quarter as adjusted by the Regional Director by reason of any adjustment warranted by paragraph (b) of this section or by overpayments or underpayments in previous quarters for which adjustment has not already been made. Upon termination of the permittee's special use permit, reimbursement or refundment of any outstanding amounts due the Department or the permittee shall be made within 180 days.

(d) Estimates required by this section shall be made by the Regional Director on the basis of the best available cost information. However, reimbursement shall not be limited to the Regional Director's estimate if actual costs exceed projected estimates.

(e) All payments required by this section shall be made payable to the Service. No applicant or permittee shall set off or otherwise deduct any debt due to or any sum claimed to be owed to it by the United States from any payment required by this section. Overpayments shall be credited or refunded to the person making them.

(f) When through partnership, joint venture or other business arrangement more than one person applies for or participates in a special use permit, each shall be jointly and severally liable for reimbursing the Department's cost under this section.

(g) Any lodging, food, communication, and transportation provided by a permittee under § 37.42 shall be deemed to be costs paid to the Department in kind for services rendered in inspecting and monitoring the permittee's exploratory activities. At the end of each quarter, the permittee shall furnish the Regional Director with a report, in a format approved or prescribed by him, on the goods and services provided during that quarter, and the names of the individuals to whom they were provided.

(h) Any dispute between an applicant or permittee and the Regional Director as to costs actually incurred by the Department and charged to the applicant or permittee shall be finally decided for the Secretary by the Director, using the procedures described in § 37.22(c).

§ 37.47 Civil penalties.

(a) This section prescribes the procedures for assessing a civil penalty

for the violation of any provision of an approved exploration plan, any term or condition of the special use permit issued under § 37.23, or any prohibition contained in this part. The civil penalty remedy afforded by this section is in addition to all other remedies available to the Secretary.

(b) *Notice of violation.* (1) The notice of violation shall be issued by the Solicitor and served personally or by registered mail upon the person named in the notice (hereinafter the respondent) or his authorized representative. The notice shall contain:

(i) A summary of the facts believed to show a violation by the respondent;

(ii) A specific reference to the provision, term, condition or prohibition allegedly violated; and

(iii) The amount of the penalty proposed to be assessed. The notice may also contain an initial proposal for compromise or settlement of the action.

(2) The notice of violation shall also advise respondent of his right to:

(i) Respond to the notice within 45 calendar days from the date of its issuance by: (A) Undertaking informal discussions with the Solicitor; (B) Accepting the proposed penalty or the compromise, if any, offered in the notice; or (C) Filing a petition for relief in accordance with paragraph (c) of this section; or

(ii) Take no action and await the Solicitor's notice of assessment. Such response must be received by the Solicitor on or before the 45th day during normal business hours at the address stated in the notice.

(3) Any notice of violation may be amended, but any nontechnical amendment will extend the running of the respondent's 45 day period for response from the date of the notice to the date of the amendment.

(4) Acceptance of the proposed penalty or the compromise, if any, stated in the notice of violation shall be deemed to be a waiver of the notice of assessment required in paragraph (d) of this section and of the respondent's right to an opportunity for a hearing described in paragraph (e) of this section.

(c) *Petition for relief.* If the respondent chooses, he may ask that no penalty be assessed or that the amount be reduced and he may admit or contest the legal sufficiency of the Solicitor's charges and allegations of facts, by filing a petition for relief at the address specified in the notice within 45 calendar days from the date thereof. Such petition must be received by the Solicitor on or before the 45th day during normal business hours. The petition shall be in writing and signed by the respondent. If the respondent is a corporation, partnership, association or agency, the petition must be signed by an officer or official authorized to sign such document. It must set forth in full the legal or other reasons for the relief requested.

(d) *Notice of assessment.* (1) After 45 calendar days from the date of the notice of violation or any amendment thereof, the Solicitor may proceed to determine whether the respondent committed the violation alleged and to determine the amount of civil penalty to be assessed, taking into consideration the information available and such showing as may have been made by the respondent. The Solicitor shall notify the respondent of his determinations by a written notice of assessment, which shall also set forth the basis for his determinations. The notice of assessment shall be served on the respondent personally or by registered mail.

(2) The notice of assessment shall also advise the respondent of his right to request a hearing on the matter in accordance with paragraph (e) of this section.

(e) *Request for a hearing.* Within 45 calendar days from the date of the issuance of the notice of assessment, the respondent may request a hearing to be conducted on the matter in accordance with 5 U.S.C. 554 through 557 by filing a dated, written request for hearing with the Hearings Division, Office of Hearings and Appeals, Department of the Interior, 4015 Wilson Blvd., Arlington, Virginia 22203. Such request must be received at this address on or before the 45th day during normal business hours. The respondent shall state the respondent's preference as to the place and date for a hearing. The request must enclose a copy of the notice of violation and the notice of assessment. A copy of the request shall be served upon the Solicitor personally or by mail at the address specified in the notice of assessment.

(f) *Finality of decision.* If no request for a hearing is filed in accordance with this section, the assessment stated in the notice of assessment shall be effective and constitute the final administrative decision of the Secretary on the 45th calandar day from the date of the notice of assessment. If the request for hearing is timely filed in accordance with this section, the date of the final administrative decision in the matter shall be as provided in paragraph (g) or (h) of this section. When a civil penalty assessed under this section becomes final, the respondent shall have 20 calendar days from the date of the final administrative decision within which to make full payment of the penalty assessed. Payment will be timely only if received in the Office of the Solicitor during normal business hours on or before the 20th day.

(g) *Hearing.* (1) Upon receipt of a request for a hearing, the Hearings Division will assign an administrative law judge who shall have all the powers accorded by law and necessary to preside over the parties and the hearing and to make decisions in accordance with 5 U.S.C. 554 through 557. Notice of such assignment shall be given promptly to the respondent and to the Solicitor at the address stated in the notice of assessment. Upon notice of the assignment of an administrative law judge to the case, the Solicitor shall file all correspondence and petitions exchanged between the Solicitor and the respondent which shall become a part of the hearing record.

(2) The hearing shall be conducted in accordance with 5 U.S.C. 554 through 557 and with 43 CFR Part 4 to the extent that it is not inconsistent with this part. Subject to 43 CFR 1.3, the respondent may appear in person, by representative, or by counsel. The hearing shall be held in a location established by the administrative law judge, giving due regard to the convenience of the parties, their representatives and witnesses. Failure to appear at the time set for hearing shall be deemed a waiver of the right to a hearing and consent to the decision on the record made at the hearing. The judge shall render a written decision on the record, which shall set forth his findings of facts and conclusions of law and the reasons therefore, and an assessment of a civil penalty if he determines that the respondent committed the violation charged.

(3) Discovery shall be obtained by employing the procedures described 43 CFR 4.1130 through 4.1141. In addition, discovery of facts known and opinions held by experts, otherwise discoverable under 43 CFR 4.1132(a) and acquired and developed in anticipation of administrative adjudication or litigation, may be obtained only as follows:

(i)(A) A party through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. (B) Upon motion, the administrative law judge may order further discovery by other means, subject to such restrictions as to scope and such provisions under paragraph

(g)(3)(iii) of this section concerning fees and expenses, as the administrative law judge may deem appropriate.

(ii) A party may discover facts known or opinions held by an expert, who has been retained or employed by another party in anticipation of administrative adjudication or litigation or preparation therefore and who is not expected to be called as a witness, only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(iii) Unless manifest injustice would result, (A) the administrative law judge shall require the party seeking discovery to pay the expert, or the Department if the expert is an employee of the United States, a reasonable fee for time spent in responding to paragraphs (g)(3)(i)(B) and (g)(3)(ii) of this section; and (B) with respect to discovery under paragraph (g)(3)(i)(B) of this section the administrative law judge may require and with respect to discovery under paragraph (g)(3)(ii) of this section the administrative law judge shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(4) Unless the notice of appeal is filed in accordance with paragraph (h) of this section, the administrative law judge's decision shall constitute the final administrative decision of the Secretary in the matter and shall become effective 30 calendar days from the date of the decision.

(h) *Appeal.* (1) Either the respondent or the Solicitor may seek an appeal from the decision of an administrative law judge as to the respondent's violation or penalty or both by the filing of a notice of appeal with the Director, Office of Hearings and Appeals, United States Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203, within 30 calendar days of the date of the administrative law judge's decision. Such notice shall be accompanied by proof of service on the administrative law judge and the opposing party.

(2) Upon receipt of such a request, the Director, Office of Hearings and Appeals, shall appoint an ad hoc appeals board to determine whether an appeal should be granted, and to hear and decide an appeal. To the extent they are not inconsistent herewith, the provisions of 43 CFR Part 4, Subpart G shall apply to appeal proceedings under this subsection. The determination of the board to grant or deny an appeal, as well as its decision on the merits of an appeal, shall be in writing and become effective as the final administrative determination of the Secretary in the matter on the date it is rendered, unless otherwise specified therein.

(i) *Amount of Penalty.* The amount of any civil penalty assessed under this section shall not exceed $10,000 for each violation. Each day of a continuing violation shall, however, constitute a separate offense. In determining the amount of such penalty, the nature, circumstances, extent, and gravity of the violation committed, and, with respect to the respondent, his history of any prior offenses, his demonstrated good faith in attempting to achieve timely compliance after being cited for the violation, and such other matters as justice may require shall be considered.

(j) *Petition for remission.* The Solicitor may modify or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this paragraph unless the matter is pending in court for judicial review or for recovery of the civil penalty assessed. A petition for remission may be filed by the respondent with the Solicitor at any time from the date of the notice of violation referred to in paragraph (b) of this section until 90 days after the date of final administrative decision assessing a civil penalty. The petition must set forth in full the legal and other reasons for the relief requested. Any petition that is not timely filed will not receive consideration. The Solicitor's decision shall be the final administrative decision for the Secretary on the petition.

Subpart F—Reporting and Data Management

§ 37.51 Operational reports

(a) Each permittee shall submit reports every 2 weeks on the progress of exploratory activities in a manner and format approved or prescribed by the Regional Director. These shall include, but are not limited to, a daily log of operations, and a report on the discovery of any springs, hydrocarbon seeps, and other unusual phenomena.

(b) Each permittee shall submit to the Regional Director a semiannual report of exploratory activities conducted within the periods from December through May and June through November. These semiannual reports shall be submitted on August 1 and February 1 or, as otherwise specified by the Regional Director, and shall contain the following:

(1) A description of the work performed;

(2) Charts, maps, or plats depicting the areas in which any exploratory activities were conducted, specifically identifying the seismic lines and the locations where geological exploratory activities were conducted, and the locations of campsites, airstrips and other support facilities utilized;

(3) The dates on which exploration was actually performed.

(4) A narrative summary of any: (i) Surface occurrences of hydrocarbon or environmental hazards, and (ii) adverse effects of the exploratory activities on the refuge's wildlife, its habitat, the environment, cultural resources, or other uses of the area in which the activities were conducted; and

(5) Such other information as may be reasonably specified by the Regional Director.

(c) Each permittee shall also submit such other reports as are specified in this part.

§ 37.52 Records.

The permittee shall keep accurate and complete records relating to its exploratory activities and to all data and information, including, but not limited to, raw, processed, reprocessed, analyzed and interpreted data and information, obtained as a result thereof. Until September 2, 1989, the Secretary shall have access to and the right to examine and reproduce any records, papers, or other documents relating to such activities, data and information in order to ascertain the permittee's compliance with this part, ability to perform under any special use permit, and reliability and accuracy of all data, information and reports submitted to the Regional Director.

§ 37.53 Submission of data and information.

(a) The permittee shall submit to the Regional Director free of charge all data and information obtained as a result of carrying out exploratory activities. Such data and information include copies of all raw data and information and all processed, analyzed and interpreted data or information. The permittee shall, unless directed otherwise by the Regional Director, submit such data and information within 30 days after the end of the annual quarter during which they become available to it at every level of data gathering or utilization, i.e., acquisition, processing, reprocessing, analysis, and interpretation.

(b) Each submission of geophysical data or information shall contain, unless otherwise specified by the Regional Director, the following:

(1) An accurate and complete record of each geophysical survey conducted under the permittee's permit, including digital navigational data, if obtained,

and final location maps of all survey stations; and,

(2) All seismic data developed under the permit, presented in a format prescribed or approved by the Regional Director and of a quality suitable for processing.

(c) Processed geophysical information shall be submitted with extraneous signals and interference removed as much as possible, and presented in a format and of a quality suitable for interpretive evaluation, reflecting state-of-the-art processing techniques.

(d) Processed, analyzed and interpreted data or information required to be submitted by the Act and this section shall include, but not be limited to, seismic record sections, and intepretations thereof; geologic maps, cross sections, and intepretations thereof; maps of gravitational and magnetic fields and interpretations thereof; and chemical or other analyses of rock samples collected on the refuge and interpretations thereof.

(e) Any permittee or other person submitting processed, analyzed and interpreted data or information to the Regional Director shall clearly identify them by marking the top of each page bearing such data or information with the words "PROCESSED, ANALYZED AND INTERPRETED DATA OR INFORMATION". All pages so marked shall be physically separated by the person submitting them from those not so marked, unless doing so will destroy the value or integrity of the data or information presented. In that event or in the event that an item is submitted which is not susceptible to marking by page, the document or item submitted will be accompanied by a summary identifying the location of all processed, analyzed and interpreted data or information which are not segregated or marked by page, and expalning the reasons therefore. All pages not marked with this legend, all other data and information not identified as bearing such data or information, and all other data and information incorrectly identified as bearing such data or information shall be treated as raw data and information and shall be made available to the public upon request in accordance with § 37.54(a). The Department reserves the right to determine whether any page or item is correctly identified as constituting processed, analyzed and interpreted data or information.

(f) If the permittee proposes to transfer any data or information covered by this section to a third party or the third party proposes to transfer such data or information to another third party, the transferor shall notify the Regional Director at least 10 days in advance and shall require the receiving third party, in writing, to abide by the obligations of the permittee as specified in this section as a condition precedent to the transfer of such data or information.

(g) Upon request by the Department, a permittee shall identify each person to whom the permitttee has provided data and information pursuant to § 37.22 (d)(3) and provide a description of the area to which such data and information pertain.

§ 37.54 Disclosure.

(a) The Department shall make raw data and information obtained as a result of carrying out exploratory activities and submitted by the permittee or a third party available to the public upon submittal to the Congress of the report required by subsection (h) of the Act in accordance with subsection (e)(2)(C) of the Act, this section, and the procedural requirements of the Freedom of Information Act, 5 U.S.C. 552, and 43 CFR Part 2. The Department shall withhold from the public all processed, analyzed and interpreted data or information obtained as a result of carrying out exploratory activities and submitted by the permittee or a third party, if they have been properly marked and correctly identified in accordance with § 37.53(e), until 10 years after the submission of such data or information to the Regional Director or until 2 years after any lease sale including the area within the refuge from which such data or information were obtained, whichever period is longer, by invoking subsection (e)(2)(C) of the Act and exemption 3 to the Freedom of Information Act, 5 U.S.C. 552(b)(3). Thereafter, the Department shall treat such data or information as raw data and information. The Department shall make all other records, except exploration plans which must be published in accordance with § 37.22(b), submitted by a permittee or a third party relating to the activities covered by the Act and this part available to the public in accordance with the Freedom of Information Act, 5 U.S.C. 552, and 43 CFR Part 2.

(b) The Department reserves the right to disclose any data and information obtained as a result of carrying out exploratory activities and submitted by a permittee or a third party and any other information submitted by a permittee or a third party which may be exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. 552, to an agent or third party in order to carry out the Department's statutory authorities. When practicable, the Department shall notify the permittee who provided the data or information of its intent to disclose the data or information to an agent or third party. Prior to any such disclosure, the recipient shall be required to execute a written commitment not to transfer or to otherwise disclose any data or information to anyone without the express consent of the Department. The recipient shall be liable for any unauthorized use by or disclosure of such data or information to other third parties.

(c) The Department reserves the right to disclose upon proper request any processed, analyzed and interpreted data and information and any other confidential information to the State of Alaska, to the Congress and any committee or subcommittee of the Congress having jurisdiction over the refuge or this exploration program, and to any part of the Executive and Judicial Branches of the United States for official use. The recipient shall be responsible for maintaining the confidentiality of such data and information in accordance with the Act.

(d) Commercial use by any person of data or information obtained as a result of carrying out exploratory activities and disclosed pursuant to this section is prohibited. No person shall obtain access from the Department, pursuant to paragraph (a) of this section, to any data or information obtained as a result of carrying out exploratory activities and submitted by the permittee or a third party until such person provides the Department with a statement certifying that person's awareness of the prohibition contained in this paragraph and the disqualification stated in the first sentence of § 37.4(b).

Appendix I—Legal Description of the Coastal plain, Arctic National Wildlife Refuge, Alaska

Beginning at the meander corner of section 35 on the First Standard Parallel North on the line of mean high water on the left bank of the Canning River, T. 5 N., R. 23 E., Umiat Meridian;

Thence easterly, along the First Standard Parallel North, approximately 40¾ miles to the closing corner of T. 4 N., Rs. 30 and 31 E., Umiat Meridian;

Thence southerly, between Rs. 30 and 31 E., approximately 6 miles to the corner of Tps. 3 and 4 N., Rs. 33 and 34 E., Umiat Meridian;

Thence easterly, between Tps. 3 and 4 N., approximately 18 miles to the corner of Tps. 3 and 4 N., Rs. 33 and 34 E., Umiat Meridian;

Thence southerly, between Rs. 33 and 34 E., approximately 6 miles to the corner of Tps. 2 and 3 N., Rs. 33 and 34 E., Umiat Meridian;

Thence easterly, between Tps. 2 and 3 N., approximately 21 miles to the meander corner

of sections 4 and 33, on the line of mean high water on the left bank of the Aichilik River, Tps. 2 and 3 N., R. 37 E., Umiat Meridian;

Thence northeasterly, along the line of mean high water on the left bank of the Aichilik River, approximately 32 miles to a point at the line of mean high tide of the Beaufort Lagoon, located in section 28, T. 6 N., R. 40 E., Umiat Meridian;

Thence on an approximate forward bearing of N. 65 degrees E., approximately 7,600 feet to a point on the northerly boundary of the Arctic National Wildlife Refuge located in section 22, T. 6 N., R. 40 E., Umiat Meridian at the line of extreme low tide;

Thence northwesterly, along the northerly boundary of the Arctic National Wildlife Refuge at the line of extreme low tide on the seaward side of all offshore bars, reefs and islands, approximately 28 miles, to a point in section 33, T. 9 N., R. 36 E., that is due north of the corner of T. 8 N., Rs. 36 and 37 E., Umiat Meridian;

Thence due South, approximately ¾ mile to the corner of T. 8 N., Rs. 36 and 37 E., Umiat Meridian;

Thence southerly between Rs. 36 and 37 E., approximately 3 miles to the corner of sections 13, 18, 19, and 24, T. 8. N., Rs. 36 and 37 E., Umiat Meridian;

Thence westerly, between sections 13 and 24, approximately 1 mile to the corner of sections 13, 14, 23 and 24, T. 8. N., R. 36 E., Umiat Meridian;

Thence northerly, between sections 13 and 14, approximately 1 mile to the corner of sections 11, 12, 13 and 14, T. 8. N., R. 36 E., Umiat Meridian;

Thence westerly, between sections 11 and 14, 10 and 15, 9 and 16, 8 and 17, approximately 4 miles to the corner of sections 7, 8, 17 and 18, T. 8 N., R. 36 E., Umiat Meridian;

Thence southerly, between sections 17 and 18, 19 and 20, 29 and 30 to the corner of sections 29, 30, 31 and 32, T. 8. N., R. 36 E., Umiat Meridian;

Thence westerly, between sections 30 and 31, approximately 1 mile to the corner of sections 25, 30, 31 and 36, T. 8. N., Rs. 35 and 36 E., Umiat Meridian;

Thence southerly, between sections 31 and 36, approximately 1 mile to the corner of Tps. 7 and 8 N., Rs. 35 and 36 E., Umiat Meridian;

Thence westerly, between Tps. 7 and 8 N., approximately 1 mile to the corner of sections 1, 2, 35 and 36, Tps. 7 and 8 N., R. 35 E., Umiat Meridian;

Thence Northerly, between sections 35 and 36 and 25 and 26, 23 and 24, approximately 3 miles to the corner of sections 13, 14, 23 and 24, T. 8 N., R. 35 E., Umiat Meridian;

Thence westerly, between sections 14 and 23, 15 and 22, 16 and 21, 17 and 20, 18 and 19, 13 and 24, 14 and 23, 15 and 22, 16 and 21, 17 and 20, approximately 10 miles to the corner of sections 17, 18, 19 and 20, T. 8 N., R. 34 E., Umiat Meridian;

Thence northerly, between sections 17 and 18, approximately 1 mile to the corner of sections 7, 8, 17 and 18, T. 8 N., R. 34 E., Umiat Meridian;

Thence westerly, between sections 17 and 18, approximately 1 mile to the corner of sections 7, 12, 13 and 18, T. 8 N., Rs. 33 and 34 E., Umiat Meridian;

Thence southerly, between Rs. 33 and 34 E., approximately 1 mile to the corner of sections 13, 18, 19 and 24, T. 8 N., Rs. 33 and 34 E., Umiat Meridian;

Thence westerly, between sections 13 and 24, 14 and 23, 15 and 22, approximately 3 miles to the corner of sections 15, 16, 21 and 22, T. 8 N., R. 33 E., Umiat Meridian;

Thence southerly, between sections 21 and 22, approximately 1 mile to the corner of sections 21, 22, 27 and 28, T. 8 N., R. 33 E., Umiat Meridian;

Thence westerly, between sections 21 and 28, approximately one mile to the corner of sections 20, 21, 28 and 29, T. 8 N., R. 33 E., Umiat Meridian;

Thence southerly, between sections 28 and 33, 29 and 32, approximately 2 miles to the corner of sections 4, 5, 32 and 33, Tps. 7 and 8 N., R. 33 E., Umiat Meridian;

Thence westerly, between Tps. 7 and 8 N., approximately 2 miles to the corner of Tps. 7 and 8 N., Rs. 32 and 33 E., Umiat Meridian;

Thence southerly, between section 1 and approximately 1 mile to the corner of sections 1, 6, 7, and 12, T. 7 N., Rs. 32 and 33 E., Umiat Meridian;

Thence westerly, between sections 1 and 12, approximately 1 mile to the corner of sections 1, 2, 11 and 12, T. 7 N., R. 32 E., Umiat Meridian;

Thence northerly, between sections 1 and 2, 35 and 36, approximately 2 miles to the corner of sections 25, 26, 35 and 36, T. 8 N., R. 32 E., Umiat Meridian;

Thence westerly, between sections 26 and 27, 34 and 35, approximately 2 miles to the corner of sections 27, 28, 33 and 34, T. 8 N., R. 32 E., Umiat Meridian;

Thence southerly, between sections 33 and 34, approximately one mile to the corner of sections 3, 4, 33 and 34, Tps. 7 and 8 N., R. 32 E., Umiat Meridian;

Thence westerly, between Tps. 7 and 8 N., approximately 3 miles to the corner of Tps. 7 and 8 N., Rs. 31 and 32 E., Umiat Meridian;

Thence northerly, between sections 31 and 32 E., approximately 3½ miles to a point on the northerly boundary of the Arctic National Wildlife Refuge at the line of extreme low tide located between sections 13 and 18, T. 8 N., Rs. 31 and 32 E., Umiat Meridian;

Thence westerly, along the northerly boundary of the Arctic National Wildlife Refuge approximately 57 miles along the line of extreme low water of the Arctic Ocean, including all offshore bars, reefs, and islands, to the most westerly tip of the most northwesterly island, westerly of Brownlow Point, section 6, T. 9 N., R. 25 E., Umiat Meridian;

Thence on an approximate forward bearing of S. 56½ degree W. approxiimately 3¼ miles to the mean high water line of the extreme west bank of the Canning River in section 15, T. 9 N., R. 24 E., Umiat Meridian;

Thence southerly, along the mean high water line of the west bank of the Canning River approximately 32 miles to the meander corner on the First Standard Parallel North at a point on the southerly boundary of section 35, T. 5 N., R. 23 E., Umiat Meridian, the point of beginning.

[FR Doc. 83-10230 Filed 4-18-83; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 37

Record of Decision for Oil and Gas Exploration Within the Coastal Plain of the Arctic National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Rule-related notice.

SUMMARY: This notice makes available to the public the Record of Decision (ROD) on oil and gas exploration within the coastal plain of the Arctic National Wildlife Refuge in Alaska. The ROD was prepared in accordance with Council on Environmental Quality regulations, 40 CFR 1505.2. The ROD reflects the recommendations of the Fish and Wildlife Service to the Assistant Secretary for Fish and Wildlife and Parks for implementing Section 1002(d) of the Alaska National Interest Lands Conservation Act (ANILCA). The recommendations of the Fish and Wildlife Service were based on the information contained in: the Final Environmental Impact Statement, which was filed with the Environmental Protection Agency on February 23, 1983, and became available to the public on March 4, 1983; the Baseline Study Reports published in April, 1982, and January, 1983, as required by Section 1002(c) of ANILCA; other pertinent scientific and technical data; and public comments received on the proposal. The ROD selects Alternative 3 of the proposal as the best alternative for implementing Section 1002(d)(1) of ANILCA. The regulatory guidelines representing Alternative 3 are being published separately also in Part IV of this same issue of the **Federal Register** as Final Rules under 50 CFR Part 37.

The Fish and Wildlife Service will hold a workshop for those interested parties wishing to submit applications for a permit to conduct exploratory activities on the coastal plain of the Arctic National Wildlife Refuge. The purpose of the workshop is to clarify application procedures and information requirements consistent with the provisions specified in 50 CFR Part 37. This workshop wil be conducted in Anchorage, Alaska approximately one week from the publication of this Notice in the **Federal Register**. For specific date(s), place, and time contact Mr. Doug Fruge of the Fish and Wildlife Service Regional Office at the address listed below.

FOR FURTHER INFORMATION CONTACT: Mr. Doug Fruge, 1011 East Tudor Road, Anchorage, Alaska, 99503, (907) 786-3381.

SUPPLEMENTARY INFORMATION: The Record of Decision follows:

Section 1002 of the Alaska National Interest Lands Conservation Act, Pub. L. 96-487 (ANILCA) provides for: a comprehensive and continuing baseline inventory and assessment of the fish and wildlife resources of the Arctic National Wildlife Refuge's coastal plain; an analysis of the impacts of oil and gas exploration, development and production; and authorization of surface exploration for oil and gas in a manner that avoids significant adverse effects on the fish and wildlife, their habitats, or the environment. Exploratory drilling is specifically excluded from this exploration program. The Secretary of the Interior is required to establish, by regulation, initial guidelines governing the conduct of these exploratory activities. The guidelines are to be based on the results of the baseline study and other information available to the Secretary, and are to be accompanied by an Environmental Impact Statement (EIS) on exploratory activities. The initial report of the baseline study was published in April 1982, and the first update was published in January 1983. The final EIS was filed with the Environmental Protection Agency (EPA) on February 23, 1983, and EPA's Notice of its availability was published in the **Federal Register** on March 4, 1983.

The Fish and Wildlife Service (FWS) has recommended adoption of Alternative 3 of the final EIS. The regulations proposed to implement this alternative reflect a moderate level of regulatory guidance and are designed to provide limitations and environmental safeguards to prevent significant adverse effects while allowing applicants a choice among geological and geophysical exploratory methods and techniques. The applicant's exploration plan must satisfy the requirements of the regulations and Section 1002 before approval to conduct exploration activities will be given.

Alternatives Considered

The following alternative regulatory strategies were considered in reaching a decision:

1. Regulations authorizing government-prescribed operations. These would provide the most detailed guidance and strongest governmental control of the alternatives considered by specifying which exploration methods and techniques are to be used when and where within the coastal plain.

2. Regulations authorizing applicant-defined operations. These would provide only general guidance to ensure environmental protection within the broad standards of Section 1002 by leaving it to each applicant to devise protection strategies to assure avoidance of significant adverse effects with a minimum of guidance as to which particular resources are considered important or sensitive.

3. Regulations as proposed reflecting an intermediate level of guidance and control. This alternative represents a mix of the regulatory strategies outlined in Alternatives 1 and 2 inasmuch as these regulations provide performance standards for assuring avoidance of significant adverse effects which will aid in the design of exploratory plans.

4. No Action Alternative. This would be the decision not to establish guidelines by regulation for oil and gas exploration on the ANWR coastal plain. It would result in a continuation of the fish and wildlife management programs currently being practiced on the ANWR coastal plain as a part of the National Wildlife Refuge System. Surface exploration for oil and gas resources within the coastal plain would not occur under this alternative and, therefore, the oil and gas resource information sought by Congress would not be provided.

Basis for the Decision

Under Alternative 1 all exploratory activities would be controlled on the basis of the impacts which would occur in the most sensitive areas until more information becomes known in order to avoid any significant adverse effects, with the attendant closure of areas to exploration as a precautionary measure and the possible absence of adequate data on which to base the required assessment of the coastal plain's oil and gas resources. It is believed that operations conducted under this alternative could result in essentially the same types, though fewer or less severe, of environmental impacts that would occur under the proposed alternative. This alternative would prevent the flexibility necessary to quickly alter exploratory activities as field experience is gained or as conditions change with respect to protective cover and animal distribution and abundance. Imposing detailed, site-specific guidance could constrain applicants in terms of the types of exploratory methods and techniques, equipment, and support facilities that could be used and the time frames permitted for work. The Service believes this, in turn, would undermine the FWS's goal of fostering sound decisionmaking on the future use of the ANWR and the congressional intent that the Department make use of the private sector's expertise and experience in obtaining the quality of data and information needed. This alternative would be administratively more burdensome and require an increase in current levels of personnel and funding to design the detailed and site-specific guidelines that would be necessary for permittees to carry out government-prescribed field operations and to monitor their activities.

Under Alternative 2 the absence of specific guidance inherent in the omission of specific performance standards under this alternative could impose a greater burden on the applicant to design an exploration plan that would assure avoidance of significant adverse effects. At the same time this would give the Regional Director less control over his consistency determinations and ultimately result in the approval of more plans. Operations permitted under this regulatory alternative would result in essentially the same types of impacts as those under Alternative 3, but the numbers and magnitude of these impacts could be greater. For this reason and because enforcement of the Section 1002 standard of no significant adverse effect under this regulatory approach would necessarily rely on more on-site monitoring rather than on initial avoidance, Alternative 2 risks a greater potential for impacts approaching or crossing the limits of the no significant adverse effects standard before enforcement action could be taken.

The EIS analysis indicates that Alternative 3 provides a reasonable balance between the data collection and environmental protection requirements of Section 1002. This moderate regulatory scheme reflects a mix of prohibitions, restrictions, and performance standards necessary to prevent significant adverse impacts to fish and wildlife, their habitats, or the environment, while ensuring that quality data can reasonably be acquired, within the time frame allotted by Congress, by enabling the private sector to utilize its exploration expertise in designing exploration plans subject to the constraints imposed by the FWS.

The No Action Alternative (Alternative 4) presents an option for decision that precludes any impact to the surface resources of the coastal plain of the ANWR from exploration activities. This is the environmentally preferable alternative. However, Congress has not set a standard of "no impacts" to the resources of the coastal plain resulting from the proposed activity, but rather has set a standard of "no significant adverse effect". Also, selection of the No Action Alternative precludes the gathering of seismic data and information on the oil and gas

resources which are necessary to make the report to Congress required by Section 1002(h).

The FWS believes that the statutory standard of no significant adverse effect to the fish and wildlife, their habitats, and the environment can be met together with its goal for data collection on the oil and gas resources under the proposed regulatory approach of Alternative 3. The FWS considers Alternative 3 as the preferred alternative since it will best achieve the aims of Congress by producing the quality of data and information needed to reach sound and lasting decisions on the future use of ANWR while preventing significant adverse effects on the fish and wildlife, their habitats and the environment of the coastal plain. I concur in these judgments. All practicable means to avoid or minimize harm that might result from allowing applicants a choice of geological and geophysical exploration methods and techniques, provided that they meet the FWS's performance standards, have been built into the guidelines developed to implement this regulatory approach.

Terms and Conditions for Implementing Decision

The FWS will implement Alternative 3 by administering the regulations developed for that purpose in the manner described in the preamble to the regulations and the EIS. This will include a monitoring program, with the objective of ensuring compliance with the specific requirements of the exploration plan, regulations, any site-specific stipulations imposed as a condition of the special use permits, and any additional orders that may be issued. The results of monitoring activities will be used to determine the necessity to suspend and/or modify operations for ensuring prevention of significant adverse effects. Acquisition of baseline information relative to vegetation, fish and wildlife, and other resources of the coastal plain of the ANWR will be ongoing, and will be formally summarized annually in interim baseline reports which will be available to the public. Geological and geophysical data and information obtained under this program will be made available to the public in the manner described in the regulations.

Conclusion

Based on a careful review and consideration of Section 1002, the results of the baseline study, the EIS, public comments on both the EIS and the proposed regulations, and other relevant factors, I am selecting Alternative 3 as the best alternative for implementing Section 1002(d)(1) of ANILCA.

Dated: April 4, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-10231 Filed 4-18-83; 8:45 am]

BILLING CODE 4310-55-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/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

List of Public Laws

Last Listing April 8, 1983

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202–275–3030).

S.J. Res. 52 / Pub. L. 98–19 To authorize and request the President to designate the week of April 10, 1983, through April 16, 1983, as "National Mental Health Week". (Apr. 15, 1983; 97 Stat. 63) Price: $1.75